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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
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LESLIE WHITELEY AND LEONARD WHITELEY,

Plaintiffs,

vs. No. 303184

RAYBESTOS-MANHATTAN, et al.,

Defendants.

_____/

(See next page for additional caption)

DEPOSITION OF
PHILIP MORRIS, INCORPORATED
through its designated representative
ELLEN MERLO

Wednesday, January 5, 2000

REPORTED BY: MARK W. BANTA, CSR #6034

TOOKER & ANTZ
COURT REPORTING & VIDEO SERVICES
818 Mission Street, Fifth Floor
San Francisco, California 94103

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
---oOo---

DAVID TAYLOR, et al.,

Plaintiffs,

vs. No. 811 998-2

PHILIP MORRIS INCORPORATED, et al.,

Defendants.

_____/

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BE IT REMEMBERED on Wednesday, January 5, 2000, commencing at 10:24 a.m. thereof, at the Offices of Shook, Hardy & Bacon, One Market Plaza, Steuart Tower, Ninth Floor, San Francisco, California, before me, MARK W. BANTA, Certified Shorthand Reporter No. 6034 for the State of California, personally appeared

ELLEN MERLO,

called as a witness, who having been first duly sworn, was examined and interrogated as hereinafter set forth.

---oOo---

A P P E A R A N C E S

LAW OFFICES OF JOHN CURRAN LADD, 1616 Castro Street, San Francisco, California 94114-3707, represented by JOHN CURRAN LADD, Attorney at Law, appeared as counsel on behalf of the Plaintiff David Taylor.

SHOOK, HARDY & BACON, LLP, One Kansas City Place, 1200 Main Street, Kansas City, Missouri 64105, represented by WALTER L. COFER, Attorney at Law, appeared as counsel on behalf of the Defendant Philip Morris, Incorporated.

SHOOK, HARDY & BACON, LLP, One Market Plaza, Steuart Tower, Ninth Floor, represented by SHANNON L. SPANGLER, Attorney at Law, appeared as counsel on behalf of the Defendant Philip Morris, Incorporated.

ALSO PRESENT: MR. GREG LITTLE (Philip Morris)

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(Exhibit 1 marked.)

PROCEEDINGS

MR. LADD: Mr. Cofer, I just had a question on the scope of the deposition.

MR. COFER: Okay.

MR. LADD: My understanding is that this deposition was noticed pursuant to -- in the Taylor case by notice of deposition served by my office on you in your office here in San Francisco on November 3rd, which we've marked as Exhibit 1. And what we are doing is a subset of the topics set forth in that notice.

MR. COFER: Okay. That's right.

MR. LADD: Could you do the best you can to describe to me what you understand the subset of topics to be?

MR. COFER: Yes. As I understand, Ms. Merlo is being produced as the person most knowledgeable on Philip

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Morris youth prevention programs and the Philip Morris website.

And it is my understanding this deposition is being taken booth in the Taylor case and the Whiteley case; is that correct?

MR. LADD: That's my understanding, also. And I understand we're going to caption it in the Whiteley case, also. I don't have a caption with me to attach.

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MR. COFER: That's correct. At a break we will provide that to the reporter.

MR. LADD: There were some similarities between the two, but they weren't identical.

MR. COFER: Okay.

EXAMINATION BY MR. LADD

MR. LADD: Q. Ms. Merlo, could you state your full name for the record, please?

A. Yes. Ellen Merlo.

Q. Just for the purposes of identification, could you give me your date of birth?

A. 10-30-40. October 30th, 1940.

Q. And what's your current position with Philip Morris -- well, let me ask, by what Philip Morris company are you employed?

A. Philip Morris U.S.A. or Philip Morris Incorporated. They're referred to as both. The domestic tobacco company.

Q. Is Philip Morris Incorporated the official corporate name and Philip Morris U.S.A. a trade name for the same corporation?

A. That's the best way to say it, yes. Philip Morris Incorporated is the official name and --

Q. It does business --

A. -- we do -- we sometimes are referred to as Philip

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Morris U.S.A. because we're the domestic tobacco company.

Q. So you understand it does business under that name in the sense that the letterhead might say that --

A. Philip Morris U.S.A., yes.

Q. And on packs of cigarettes, what does it say? Do you know? Which corporation?

A. That's a very good question. I'm not sure.

Q. All right.

A. I think it says U.S.A., but I'm not sure.

Q. But in any case, you don't distinguish between those two names?

A. No.

Q. It's the same entity as far as you are concerned?

A. Same entity.

Q. And do you know what entity -- is there -- is Philip Morris Incorporated a wholly-owned subsidiary of some other corporation?

A. It's an operating company of Philip Morris Companies, Inc.

Q. And is Philip Morris Companies, Inc. a subsidiary of any other company?

A. No.

Q. Philip Morris Companies, Inc. is the New York Stock Exchange traded company?

A. That's correct.

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Q. A member of the Dow Jones Industrial Average?

A. Correct.

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Q. And what is your position with Philip Morris Incorporated?
A. I'm senior vice president of corporate affairs of Philip Morris U.S.A.
Q. And when did you assume that particular position?
A. In 19 -- senior vice president I think was 1995 or '6. Prior to that I was vice president, so from '92.
Q. Vice president for corporate affairs?
A. Um-hmm. Same title, only vice president as opposed to senior vice president.
Q. And have your duties been essentially the same in both of those positions?
A. Essentially, yes.
Q. Has your reporting relationship been the same in both of those positions?
A. No. It has not.
Q. Leaving aside the individual person to whom you report, have you reported the same level in the corporation under both titles?
A. No. As vice president I reported to a senior vice president.
Q. Okay.
A. And now I report to the president and CEO.

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Q. And the senior vice president to whom you reported was senior vice president for something or other?
A. External affairs, Philip Morris U.S.A.
Q. And did you report to that position throughout the time that you were in the title of vice president, corporate affairs?
A. I did.
Q. And have you reported to the president and CEO of the corporation throughout your period of time when you bore the title senior vice president of corporate affairs?
A. I have.
Q. Have the people who have filled that role changed --
A. Yes.
Q. -- while you were reporting to them?
A. In one case, yes. In the other case, no.
Q. Okay. And to whom did you report while you were vice president of corporate affairs?
A. To Steven Parrish.
Q. And did he hold the position of senior vice president for external affairs when you assumed your position?
A. Yes.
Q. And did he still hold that when you left that position?

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A. Yes.
Q. So that would be 1990 -- at least 1992 through 1995 or '6?
A. '5 or '6, exactly.
Q. Is Mr. Parrish still with Philip Morris?
A. Yes.
Q. And in that same position still?
A. No.
Q. What position now?
A. He's now senior vice president of corporate affairs for Philip Morris Companies, Inc.
Q. And who was the president and chief executive officer of Philip Morris Incorporated when you became senior

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vice president of corporate affairs?
A. James Morgan, M-O-R-G-A-N.
Q. Do you know his middle initial?
A. J.
Q. And do you know when he had first become -- well, did he become president and chief executive officer at the same time? Those positions went with each other?
A. He became president and CEO, yes, around the same time that I became senior vice president of corporate affairs.
Q. And at some point did he retire?
A. Yes, he did.

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Q. And when did he retire?
A. Two years ago in December, so it would have been '97. December of '97.
Q. And he left the company entirely at that point?
A. Yes.
Q. Do you know if he has any ongoing consulting relationship with the company?
A. I don't know what his arrangement is. He may.
Q. And was he still president and CEO of Philip Morris Incorporated up until the time he retired?
A. Yes, he was.
Q. Who succeeded him as president and CEO?
A. Michael E. Szymancyzk.
MR. COFER: You might want to spell that for the recorder.
THE WITNESS: Thanks. S-Z-Y-M-A-N-C-Y-Z-K. Or do I have one of the consonants out of order? I think that's it.
MR. LADD: Q. It's probably there, by chance.
MR. COFER: Yes. S-Z-Y --
THE WITNESS: M-A-N-C-Z-Y-K.
MR. LADD: Could you pronounce it again for me?
A. "Simansic."
Q. Kind of like "semantic" but with the S moved around?

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A. Szymanczyk.
Q. Scymanczyk?
A. Um-hmm.
Q. Okay. I'll probably forget that, but we'll move on.
Philip Morris Companies, Inc. has subsidiaries in addition to Philip Morris Incorporated?
A. Operating companies is what we call them, yes.
Q. Okay. And how many operating companies are owned by Philip Morris Companies, Inc.?
A. Five. Five.
Q. And obviously, Philip Morris Incorporated is one of them?
A. Philip Morris Incorporated, Philip Morris International, Miller Brewing Company, Kraft Foods and Philip Morris Credit Corporation.
Q. What does Philip Morris Credit Corporation do?
A. It is a small company that finances various projects, invests in airplane leasing and -- it's strictly a financial transaction kind of a company.
Q. Does it provide credit to any of the customers of the other four operating companies?
A. I think it occasionally does, but that is not the main source of its business. I mean if there is a good

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investment. It really would be based on the criteria of its business as opposed to because it was a customer of ours.

Q. Does Miller Brewing Company get involved in any products in addition to beer?

A. No.

Q. And does it sell outside of the United States?

A. Yes, it does.

Q. And do you know in how many other countries?

A. I couldn't tell you how many other countries, but it does sell around the world. I don't know that it's in every country, but it does sell around the world.

Q. And in --

A. Limited internationally.

Q. In most developed countries?

A. Most developed countries, but most of its business is domestic. Very little international business.

Q. All right. Could you give me just kind of a listing of the major products of Kraft Foods? I realize it's very extensive.

A. There are hundreds. Well, Maxwell House coffee. All Kraft cheeses. Post cereals. Toblerone candies. Cheez Whiz. A whole assortment of pizzas. Let's see, what else do we make? Kraft mayonnaise. Cool Whip.

Q. That's impressive and plenty. Do you have a sense of where it stands nationally in terms of food manufacturing?

A. Number one.

Q. It's number one in terms of volume?

A. Um-hmm.

Q. Does it sell internationally?

A. Yes, it does. It sells all over the world.

Q. Does Philip Morris International sell anything other than tobacco products?

A. Technically, no, except in certain countries in Latin America Philip Morris International also manages our food business. I think it's Brazil and a few other countries where it manages the food business. But overall, it is most focused on tobacco.

Q. And does it sell basically in close to every country in the world?

A. Just about. There might be a few exceptions, but to my knowledge Kraft is just about everywhere. With some products. It doesn't sell necessarily the full line of products everywhere, but has some product representation just about in every country.

Q. And is Marlboro the biggest brand for Philip Morris International?

A. Marlboro is the biggest brand in the world, yes.

Q. Are there any brands that are sold in the United States that are sold overseas by companies other than Philip Morris International? In other words, somebody else has the right to the same name in Canada or Germany or wherever?

A. Benson & Hedges is a brand that Philip Morris owns primarily in the United States and is marketed by British American Tobacco just about everywhere else.

And Philip Morris does not own Marlboro in Canada, which is to my knowledge the only place that we don't own it.

Q. Does somebody else sell Marlboro cigarettes in Canada?

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A. I don't know that it's currently being marketed, but I know we don't own the mark up there. It used to be marketed, but it was a small brand in Canada.
Q. And who is the owner of that brand name?
A. I don't remember. I'm sorry.
Q. Is it one of the major tobacco companies?
A. Probably, but I -- quite frankly, I've forgotten which of the companies might have owned it.
Q. Is there a cigarette, brand of cigarettes which Philip Morris sells in Canada which is intended to be similar to Marlboro either in product definition or marketing position?
A. We no longer have a business in Canada.
Q. No business at all?
A. No. We sold it. We used to have a business in Canada, but we sold it several years ago.

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Q. And what's that business now called?
A. I don't remember who we -- I think we sold to Rothman's, but I'm not sure. And I'm not sure what's being marketed up there.
Q. So in Canada if I saw a brand that sounded like a Philip Morris brand, it wouldn't be yours even if the brand name was the same?
A. Yes. We -- Philip Morris as an entity does not sell tobacco products in Canada.
Q. Does it supply any of the physical tobacco products which are sold under Philip Morris brand names in Canada?
A. Not to my knowledge.
Q. Does Philip Morris do any advertising in Canada?
A. No.
Q. Does it do any promotions in Canada?
A. No.
Q. When did it sell that Canadian business?
A. I would say probably the early '90s.
Q. Why was that business sold?
A. It wasn't a terribly profitable business for us, and I think a decision was made on that basis.
Q. Is there any current discussion within Philip Morris about spinning off tobacco-selling companies from other companies?

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A. Not to my knowledge.
Q. Have your basic day-to-day duties stayed the same in both the vice president and senior vice president position?
A. Essentially. Some changes, but essentially the same.
Q. Taking first those duties that are common to both positions, I'm going to ask you about that. Then I'm going to ask if you've dropped any or added any. Is that fair?
A. Um-hmm.
Q. What duties were common to both those positions?
A. External communications, dealing with the media. Consumer affairs, dealing with our customers who called in. Or our consumers. I shouldn't say customers. Consumers who might have called in about any question about our products or our company. Developing proactive programs that deal with -- on some of the issues that face our industry, like an accommodation program, some of our youth access work early on, like Action Against Access. Those were some of the main duties.

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Q. Okay. Were there any duties in that field -- well, let me say that differently.
Were there any duties that you had as senior vice president that wouldn't fit in that list you just gave me?
A. No. I'm still doing --

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Q. All those?
A. -- all of those things.
Q. And do your current duties also still fit under those categories? Or is there another category you have?
A. Pretty much so. Also, what I neglected to mention was I have responsibility for something that we call community relations, which is our relations within our plant communities in Richmond, Cabarrus, North Carolina, and our Louisville, Kentucky. So dealing with the local community. Also our contributions within PMUSA.
Q. Contributions as in charitable contributions?
A. As in charitable contributions, but just for PMUSA.
Q. Are all of those functions for Philip Morris International as opposed to Philip Morris Companies?
A. They're all for Philip Morris U.S.A. as opposed to Philip Morris Companies. Nothing for International.
Q. All right. And the charitable contributions and community relations work, that's spread out over both the vice president and senior vice president positions?
A. Yes, that's correct.
Q. Now, when you talk about external communication, you mentioned dealing with media. I didn't know if you meant that as an example or as an equivalent description.
A. It's an example. And I mean my group deals with,

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are liaisons with external media.
Q. Do you have any responsibilities that are related to marketing?
A. In this job?
Q. In this job.
A. As a senior vice president?
Q. Um-hmm.
A. Well, as a member of the senior team, I'm obviously privy to what goes on in some of the other functional areas, but I have no direct responsibility for our marketing programs.
Q. In other words, if there's something that was left in the collective wisdom of upper management you would participate in a decision?
A. That's correct.
Q. But you don't have line responsibilities for marketing?
A. That's correct.
Q. And you would include both advertising and promotion under marketing?
A. I would.
Q. Does Philip Morris have a corporate image maintenance function?
A. Yes.
Q. Does that fall under your area of responsibility?

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A. No. It falls under Philip Morris Companies, Inc. area of responsibility.
Q. Now, you mentioned consumer affairs and gave, I think again, an example of that in saying that that would include responding to a consumer who had a question. Would

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there be other subcategories of that?
A. Well, for instance, if someone called and was expecting to receive materials because they had responded to a promotion and hadn't for some reason, they would call and we would work to track down their order and give them a response. Or if they -- something happened in the news and they had a question about our position or something was going on and they wanted to take a stand on an issue and wanted some guidance as to who they could call or what they could do. I mean it's a fairly -- fairly typical of any consumer affairs operation for any company in just responding to the public and helping them with whatever their issues might be.
Q. I noticed on the Philip Morris website that there is an area of the site that I think is called government or government affairs.
A. Yes.
Q. And it includes ability for the visitor to the site to put in their zip code and find out who his member --
A. That's right.

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Q. -- house member is, for example?
A. Correct.
Q. Does that fall under your area of responsibility?
A. It does. Yes, it does.
Q. Does any other what you might call government affairs work fall within your area of responsibility, other than that assistance to your consumers in making their views known?
A. Not -- not in my current capacity.
Q. So what we might call generally lobbying is not your job?
A. Not as senior vice president of corporate affairs, no.
Q. Did you do any of that as vice president, corporate affairs?
A. The government affairs function reported to me. I never directly did any lobbying. But that government affairs function as vice president of corporate affairs did report to me. It no longer does.
Q. And was that change in the reporting relationship coincident with your change from vice president to senior vice president?
A. It was.
Q. Was there a position who stepped into your old job, a person who stepped into your old job?

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A. No. We basically reorganized, and so we did not replace my position per se.
Q. And when Steve Parrish moved up to Philip Morris Companies, Inc., did someone take his position?
A. Well, I took part of his position, and the other part of his position was taken by someone else. So the job was really split.
Q. And who was the someone else?
A. Denise Keane.
Q. How do you spell her last name?
A. K-E-A-N-E.
Q. And what part of Mr. Parrish's job did she take?
A. She was general counsel. And she had been associate general counsel.
Q. And so the non-legal part of Mr. Parrish's job became your job?

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A. That's correct.
Q. Now, you started with Philip Morris in what year?
A. 1969.
Q. What kind of work, if any, had you done prior to getting to Philip Morris?
A. Just prior to joining Philip Morris I was actually living out here on the west coast in Los Angeles, and I was managing editor of Motor Trend magazine.
Q. And how long had you been with that magazine?

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A. From 1966 until the time I moved back east, '69.
Q. And what had you done prior to 1966?
A. I had worked in advertising --
Q. Okay.
A. -- for a couple of agencies and had also worked very briefly for Revlon.
Q. Do any of those advertising agencies either currently or in the past handle tobacco accounts?
A. Yeah. Actually, the first agency that I worked for, Young & Rubicam, currently handles tobacco.
The other one was a small international agency.
Q. And did they do any tobacco work?
A. No.
Q. Did you have any responsibilities related to tobacco while you were at Y&R?
A. No.
Q. Has Young & Rubicam to your knowledge ever worked for Philip Morris?
A. They do now.
Q. They do now? Did you play any role in retaining them?
A. No.
Q. Do you know if they worked for Philip Morris while you were working for Y&R?
A. No, they did not.

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Q. Could you spell Rubicam for the reporter?
A. R-U-B-I-C-A-M.
MR. COFER: I thought you were referring to the Young and the Restless.
THE WITNESS: Y&R?
MR. LADD: Q. Had you had jobs prior to the advertising agencies and Revlon? Or were you in school prior to that?
A. I was in school. I had part-time jobs.
Q. What was the highest level you reached in school?
A. I went to Catherine Gibbs, which was a secretarial liberal arts school, for two years.
Q. And prior to that, were you in high school?
A. High school.
Q. In one of your prior depositions you were asked some kind of detailed questions about your compensation level.
Painting with a broad brush, would it be fair to say that you make in the vicinity of half a million dollars a year, when you combine all of the various sources of your compensation?
A. That would be -- that would be about right.
Q. And for how many years has that been true?
A. Well, with a very broad brush because I don't think it's quite at that -- totally at that level, probably

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over the last five or six years.

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Q. Are you a smoker?
A. Was I?
Q. Are you now?
A. I am not a smoker now.
Q. Did you smoke formerly?
A. I'm sorry?
Q. Did you formerly smoke?
A. Yes, I did.
Q. And when did you start smoking?
A. I started smoking in about 1958 or '59, when I was 18 years old.
Q. And when did you quit?
A. In about '65 or '66. Although I still occasionally do smoke both cigarettes and cigars.
Q. So you smoked for roughly six or seven years total?
A. That's correct.
Q. Had you experimented at all with cigarettes prior to the time you were 18 years old?
A. No.
Q. You never inhaled a single puff?
A. Nope.
Q. Do you recall what was the occasion of your starting?

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A. My 18th birthday.
Q. And why was that?
A. Well, basically, because when I was 16 I asked my parents if I could smoke. And they said no, I couldn't because I was too young, but if when I were 18 I still wanted to smoke, that would be my decision. And while they would prefer I didn't, they would -- that was up to me to decide.

And on my 18th birthday, my parents said "If you still want to, you do with our blessing." And I wanted to try, so I did, and smoked for a couple of years.

Q. Okay. Under that scenario, did you have a perception for yourself personally that smoking was kind of a rite of passage into adulthood?
A. I don't know if I thought it was a rite of passage, but a lot of my friends smoked and I wanted to smoke, as well.
Q. And you were aware, I assume, that a number of your friends smoked before they turned 18?
A. No, most of my friends actually didn't smoke before they turned 18. Most of my friends just happened to be older than I was when I was growing up.
Q. What high school did you go to?
A. Memorial High School in West Newark, New Jersey.
Q. And smoking was not prevalent in that school?

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A. Not that I recall. I'm not saying that no one did, but most of my friends did not until their parents gave them permission.
Q. Okay. Did you ever, prior to the time you quit more or less permanently, did you ever quit temporarily?
A. I don't think so.
Q. Okay. Did you quit successfully in your first effort to quit?
A. Yes.
Q. Did you use anything to assist you in quitting in any way?
A. No.

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Q. Why did you quit?
A. I was -- I was working at the time for a company that -- I was a secretary, and we were not allowed to smoke at our desks all day long. And it just -- I guess because I wasn't smoking all day, just thought, "well, I just won't smoke anymore at all." And so I stopped.
Q. Did you find that that smoking policy made it easier for you to quit?
A. I -- I have to tell you, it just never was an issue. I just made up my mind that I wasn't for some reason going to do it anymore, and I stopped doing it.
Q. Had you started out at one level of smoking in terms of so many cigarettes a day and increased and/or

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decreased over time? Or was it pretty much at a flat level?
A. No. I used to smoke about a pack plus a day, I would say.
Q. Throughout that period of time?
A. Throughout the whole period of time.
Q. And what brands did you smoke? What was your starter brand?
A. I think it was Lucky Strike, because that's what my father smoked.
Q. Non-filtered?
A. Um-hmm.
Q. 85 millimeter?
A. Um-hmm.
MR. COFER: You have to answer "yes."
THE WITNESS: I'm sorry. Yes. Yes. Sorry.
MR. LADD: Q. Did you ever change either to a different configuration of Lucky Strike or to another brand?
A. I changed to Pall Mall.
Q. 100 millimeter?
A. I guess. I think it was 100 millimeter, yes.
Q. Filtered?
A. Unfiltered.
Q. Unfiltered? What would have been called king size at that point?
A. Umm --

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Q. You don't know?
A. I don't remember.
Q. You remember it being longer than the Lucky Strike?
A. It was longer than the Lucky Strikes, yes.
Q. It either went from 75 to 85 or 85 to 100?
A. (Witness nods head.) Exactly, yes.
Q. About how long did you smoke the Lucky Strikes before switching to Pall Mall?
A. That's a long time ago. I would say probably a couple of years.
Q. And why did you make that change?
A. Quite frankly, I don't remember.
Q. Did you continue to smoke Pall Malls up until the point you quit?
A. Yes.
Q. Continued to smoke the same configuration of Pall Malls?
A. Yes.
Q. So that same length and still unfiltered, and still not menthol, I assume?
A. Correct.
Q. Did you ever try filtered cigarettes?

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A. Ever?
Q. Yes. I mean just picked one up and smoked it to see what it was like?
A. Yes. Yes.
Q. Do you recall what brands of filtered cigarettes you tried?
A. I've tried Marlboro. I've tried --
Q. And I mean in the time that you were smoking regularly.
A. Oh.
Q. Not since.
A. No.
Q. Okay.
A. Not to my recollection, at least.
Q. Have you ever since the time you stopped smoking restarted smoking for, say, five cigarettes a day or more?
A. No.
Q. Did you ever feel any pressure in your position at Philip Morris that it would be appropriate for you to smoke?
A. Absolutely not.
Q. When you started with Philip Morris, were you in a marketing function?
A. No. When I started with Philip Morris I was in a corporate affairs function.
Q. Did you have a title?
A. Yes. I actually started with Philip Morris in Canada at Benson & Hedges Canada, Ltd., and I was manager of -- I don't remember the exact title. But it was -- it was kind of events promotion, internal communications and an equivalent of a corporate affairs kind of a job. I just don't remember the exact title.
Q. So to the extent that it was a marketing function, it was -- well, let me ask it this way: Was there any relationship between your events promotion responsibilities and marketing?
A. There was coordination, but it was not -- it was not considered a marketing function. It was really a publicity function.
Q. And was the company for which you were working at the time Philip Morris Incorporated or some different entity?
A. No. I was working for the Canadian subsidiary of Philip Morris.
Q. Philip Morris then and I assume still has -- itself has subsidiaries that are specific to particular countries?
A. No, I think now everything is part of Philip Morris International, so they would be part of the holding companies as opposed to subsidiaries.
Q. But formerly there were subsidiaries that were specific to at least some countries?
A. That was one of the few, in Canada.
Q. All right. When you went from that job to your next job, were you still with Canada?
A. No. I came back to the states.
Q. And what function did you start out in the states?
A. I came back and worked for Philip Morris International. I was transferred from the subsidiary to Philip Morris International in New York in a product publicity capacity. I think -- I think my title was as an

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administrator.
Q. And were your duties specific to some geographic area of the world?
A. They were fairly general, and they had to do mainly with programs that were being run in the United States as opposed to anywhere else.
Q. And were there specific brands that were involved?
A. It was more of a -- more of a corporate entity kind of a job --
Q. So --
A. -- for International.
Q. -- it didn't relate to one brand more than another brand?
A. Not -- not initially when I came back to Philip Morris International.
Q. What was your next position after that?
A. Then I had a similar position for Philip Morris, I

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guess then it was Incorporated, which was at the time kind of the parent company, as an administrator of product publicity.
Q. And when did you take on that job?
A. 19 -- the end of 1970. December 1970.
Q. Was that about the time that the Virginia Slims Tournament started up?
A. Exactly.
Q. Were you transferred over to that position largely because they needed someone to do that?
A. Yes.
Q. How long had Virginia Slims been available in the market at that point?
A. Virginia Slims was introduced in 1968, in October of 1968.
Q. Prior to when you went into that position in 1970, had you had any business related to Virginia Slims?
A. With Virginia Slims?
Q. Right.
A. No, I did not.
Q. In the same position where you did work on the Virginia Slims tennis tournaments, did you do any work related to other brands?
A. Yes, I did.
Q. At the same time, essentially?

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A. Yes.
Q. And did those brand or brands include Marlboro?
A. Yes.
Q. Any other brands?
A. Also we -- at the time we owned Personna razor blades and Clarke chewing gum. I worked on some projects for them, as well. Benson & Hedges. I think that was -- those were the four or five projects that I worked on.
Q. Did you report to the same person throughout your time in that position?
A. Yes. Yes, I did.
Q. And who was that person?
A. Jack Smith.
Q. Do you know what his position was at the time?
A. He was manager of product publicity.
Q. And how long did you stay in that position?
A. Until sometime in 1972. I think around April.
Q. And what was your next position?
A. Next position was as assistant brand manager on

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Virginia Slims.
Q. How long did you stay in that specific position?
A. For several years.
Q. And did you report to the brand manager?
A. I did.
Q. Did you have any people reporting to you?

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A. No, I did not. A secretary, but --
Q. Was the same person brand manager throughout?
A. I believe. Yes, I believe so. John Granville.
Q. Could you spell his name, please?
A. G-R-A-N-V-I-L-L-E.
Q. Were you located in the same building throughout your career so far, with the exclusion of the Canadian time? Well, I'm making an assuption. When you were working for the Canadian subsidiary, where were you working?
A. I was in Montreal.
Q. And at some point did you move to the United States?
A. I moved, yes.
Q. Was that coincident with the change to working for Philip Morris Incorporated?
A. That's correct.
Q. I'm sorry.
A. International.
Q. With Philip Morris International?
A. International, and then Incorporated.
Q. Have you stayed physically located in New York City ever since?
A. Yes.
Q. Always in the same building or --
A. No. We -- we built our own building across the

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street from the building I started in back in the mid '80s.
Q. In both cases were you in the building that was essentially the world headquarters of Philip Morris Companies?
A. Yes, I was.
Q. And then that's been true continuously from the time you moved from Canada to the present?
A. That's correct.
Q. While you were assistant brand manager, did you have duties with respect to any other brands?
A. When I was assistant brand manager of Virginia Slims?
A. Yes.
Q. No.
Q. What was your next position after that one?
A. I believe it was as brand manager of Parliament.
Q. When you were working as brand manager for Virginia Slims, was there more than one configuration of the product?
A. No. There was just the Virginia Slims regular, menthol, full flavor filter.
Q. I'm sorry. There was a menthol and non-menthol version?
A. That's correct.
Q. And they were both filtered?

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A. That's right.
Q. And they were both 100 millimeter?
A. That's correct.
Q. And they were both somewhat slimmer in their

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dimensions than regular cigarettes?
A. Correct.
Q. And were they in both of those same configurations at the time you started and at the time you ended that job?
A. Yes.
Q. When you worked for -- started working as brand manager for Parliament, to whom were you reporting?
A. I think it was Jim Morgan.
Q. Jim Morgan?
A. Yes. I believe he was director of brand management at the time.
Q. And he's the same James Morgan who became president and CEO later?
A. Yes, that's correct.
Q. How long did you remain brand manager for the Parliament brand?
A. A year or two.
Q. Roughly 1974 to '76?
A. I would say roughly, yes.
Q. And did Parliament come in more than one configuration at that time?

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A. Yes.
Q. And what configurations did it come in? Is there a better term to use than "configuration"?
A. Well, no. Packing.
Q. Packing? All right.
A. That's the way we would refer to it. Yes, there was an 85 millimeter filter, non-menthol; there was -- in a soft pack. I think there was an 85 millimeter non-filter.
Q. Non-filter?
A. I'm sorry. Filter, non-menthol, in a box packing. And there was 100 millimeter filter, non-menthol, in a soft pack. There were three. I believe those were the three packages that we had.
Q. Were they the packings when you started and when you ended?
A. Yes.
Q. Was there any other packing that was tried and then abandoned when you were in that job?
A. Is there any -- sorry.
Q. Was there any other packing that was tried after you started but rejected before you stopped?
A. Not to my recollection, no.
Q. What was your next position?
A. Somewhere in there, I'm losing -- the years are running together a little bit. I was also brand manager of

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Virginia Slims.
Q. And were you in that position simultaneously with being in the other position? Or was that -- that was a --
A. No, they were successive. Parliament was probably not as long as two years. It probably was more like one year.
MR. COFER: John, why don't you sometime in the next five or ten minutes look for a place to stop. I'll check on the status of your copies, we'll check what we want to do for lunch.
MR. LADD: Why don't we take the jobs through. It won't be too much longer, I hope.
Q. How long were you brand manager for Virginia Slims?
A. A year or two.

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Q. Reporting still to Mr. Morgan?
A. I believe so, yeah. Yes, I think the whole time I reported to Mr. Morgan, yes.
Q. And did Virginia Slims have the same packings as it had when you were assistant brand manager?
A. Yes.
Q. And what was your next position?
A. Brand manager of Benson & Hedges very briefly.
Q. For less than six months?
A. Just about six months. Six to eight months,

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something of that nature.
Q. Reporting to Mr. Morgan?
A. Yes.
Q. And what was the next position?
A. Next position was director of merchandising materials.
Q. For which businesses?
A. For Philip Morris U.S.A. So for all of our brands.
Q. And for how long were you in that position?
A. From late 1978 until sometime in '82.
Q. Were you reporting to Mr. Morgan in that position?
A. Yes.
Q. And after leaving that position, where did you go next?
A. I either went -- I'm not sure, because the years start to run together a little bit. I either went on to be director of communications -- I think the next job was director of communications for Philip Morris U.S.A.
Q. And was that both internal and external communications?
A. It was -- it was mainly external. And it also included our event sponsorships, so it was -- it was kind of a --
Q. And to whom did you report in that position?

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A. Still Jim Morgan.
Q. Was he still in the same position, or had he changed positions?
A. He was vice president or -- vice president of marketing, I believe, by that time.
Q. And how long did you stay in that position?
A. For, oh, a few years. Two. Maybe two, three years, something like that.
Q. Now, you indicated you might have had some confusion about whether this job or a different job came first?
A. Well, then I also became director of marketing services which included what I was doing in my previous two jobs but expanded my responsibility to include other things, as well.
Q. And by the previous two jobs, do you mean --
A. Merchandising and communications.
Q. Were you -- did you have reporting to you two people who were in the same positions that you had previously been in? Or did they just give you two jobs?
A. I had people reporting to me who assumed responsibility for the jobs I'd had.
Q. And how long were you in that position?
A. Well, I was director for two or three years, and then I was made vice president of that same area probably in

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the late '80s.
Q. So at that point you become vice president of marketing services?
A. That's correct.
Q. And how long did you stay in that position?
A. You know, wait a minute. I think I might have gotten something -- I think there was a short interim period where I was group director of brand management and then went on to become vice president of the marketing services. It's hard to keep track of it all.
Q. Sure. So when you were group director of brand management, the brand managers were reporting to you?
A. The brand managers of the Virginia Slims and Merit reported to me. Virginia Slims and Merit.
Q. And for -- getting back to the vice president of marketing services, how long did you stay in that position?
A. That would have followed the director of brand management, and I stayed in that position until 1992 when I became vice president of corporate affairs.
MR. LADD: Break time.
MR. COFER: Okay. Great.
(Brief recess in proceedings 11:17 to 11:31 am.)
(Exhibit 2 marked.)
MR. LADD: Q. Ms. Merlo, in your various brand manager jobs, either assistant brand manager, brand manager,

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or supervising other brand managers, is it fair to say that the brand manager position coordinates all marketing and promotion activities for a given brand?
A. Yes, that's correct.
Q. And that would be basically the short version job description of a brand manager?
A. Yes.
Q. And so when you were in your brand manager positions, you were dealing with whoever was the advertising agency for that particular brand?
A. Correct.
Q. And would you be dealing with market research firms with respect to studies done related to that brand?
A. I -- I would have tended to deal with our internal market research group.
Q. Okay. So if someone contracted something out, it would be from the research group and they would funnel the information back through that group before it reached you?
A. That's correct.
Q. And so sometimes you would receive information generated internally, sometimes you would receive information that was generated by a Philip Morris contractor, and sometimes I suppose you would receive information that was just available in the public sector?
A. That's correct.

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Q. And that you would consider information from all three of those sources in making brand-related decisions?
A. Not necessarily. I mean some -- some things that -- research that was conducted for marketing reasons I would consider, information that was just publicly available I might not take into consideration at all.
Q. Were there times when you found that your marketing research people would kind of repackage for you publicly-available information?
A. They often issued reports just on an ongoing basis, yes.

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Q. And amongst the kinds of reports that they would do would be something that would try to find the salient points in a publicly-available data set?
A. Sometimes.
Q. And sometimes you thought that was, indeed, salient and sometimes I suppose you didn't think it was salient?
A. Exactly.
Q. Ms. Merlo, you realize that with respect to the topics about Philip Morris youth prevention programs and with respect to the Philip Morris website you are speaking on behalf of the corporation?
A. That's correct.
Q. Not just your own personal knowledge, but to try

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to -- you've made an attempt to familiarize yourself with what the corporation knows about those topics?
A. That's correct.
Q. And that it would be fair for us to say about your testimony on those topics that this is Philip Morris' view if you expressed it?
A. Yes, that would be -- that would be accurate.
Q. You're expressing corporate views here?
A. To the best of my ability, that's correct.
Q. And I take it in your regular job you do that a lot, also?
A. Yes, I do.
Q. Okay. You communicate not as Ellen Merlo, but as the spokesperson for Philip Morris?
A. For Philip Morris U.S.A., that's correct.
Q. And you've had that kind of responsibility throughout the last at least seven years?
A. Yes, I have.
Q. Okay. Have you received any training with respect to either media presentations or other parts of your job?
A. Yes.
Q. And prior to the time that you were in the current position, I'm going to talk about the vice president and senior vice president times since '92, have you had any formal training in dealing with either a spokesperson role

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or a media spokesman role prior to that?
A. I had media training, yes.
Q. And roughly on how many different occasions?
A. Oh, from time to time I would go through a refresher, you know, interviewing techniques, et cetera.
Q. And are we talking a dozen times over the course of your career prior to 1992, or two or three?
A. I would say probably about a half a dozen would be accurate.
Q. And typical duration would be a day or two?
A. Oh, typical duration would be several hours.
Q. Did Philip Morris have employees who did that kind of training? In other words, acted as the trainers and you were being the trainee?
A. Internal employees? No.
Q. There would be an outside consultant type that would do that?
A. Normally, yes. That would be the way it would be, yes.
Q. And you have continued to have training of that nature since 1992?
A. Once or twice since then.

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Q. And again, half a day at a time or thereabouts?
A. That would be right, yes.
Q. And that would include on occasion being
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videotaped, as a TV station might videotape you?
A. Correct.
Q. And then having the opportunity to see yourself on a videotape?
A. Yes.
Q. And get some feedback by the trainers as to how you might present the company's position effectively?
A. Correct.
Q. Have you testified in any trials where Philip Morris was a party?
A. Yes.
Q. And have any of those trials involved health issues?
A. No.
Q. How many times have you testified at trial?
A. I think only once.
Q. And in what sort of case was that?
A. It was actually a case back in the early '70s that had to do with women's tennis.
Q. Essentially a business dispute?
A. It was a dispute between the United States Tennis Association and the Women's Tennis Association. The women were breaking off on their own and breaking away from the USTA, and there was a dispute going on.
Q. Was Philip Morris actually a party in that case?
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A. I don't remember if we were a party or if because we were the major sponsor we were called on to testify. It's quite a long time ago, but we definitely were called on.
Q. Okay. Did you give a deposition in that case, as well as trial testimony?
A. No, I don't believe I did give a deposition in that case.
Q. And was that testimony in front of a jury in the trial?
A. I don't believe so. I think it was in front of a -- just a judge.
Q. A judge in a courtroom?
A. In a courtroom, yes.
Q. As opposed to an arbitrator, for example?
A. It was definitely in a courtroom with a judge.
Q. Have you participated as a witness in any arbitrations or mediations?
MR. COFER: Arbitrations or mediations?
THE WITNESS: Not to my recollection, no.
MR. LADD: Q. Have you given depositions similar to this one in any tobacco health-related cases?
A. Yes, I have.
Q. Have you given depositions similarly to this one in cases other than tobacco health-related cases?
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A. Yes.
Q. Let's talk about the others first. About how many occasions?
A. Three or four.
Q. Okay. And spanning what period of years, earliest to latest in this category?
A. I would say probably the early '80s through the

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early '90s.
Q. Did any of those depositions relate in any way to any specific Philip Morris brands?
A. I think they were -- to my knowledge, they were more general than brand specific, as I recall them.
Q. Did any of them have to do generally with advertising or promotion of cigarettes?
A. I'm trying to think back. I think there was one, one that involved I think Virginia Slims or one of our others. It could have been brand specific about promotion, but I don't remember the detail.
Q. Okay. Can you give me just a rough idea what that was about?
A. You know, I -- I know it had something to do with some kind of a claim about promotion or a supplier or something like that, but I don't remember the detail of the claim, quite frankly.
Q. Do you remember whether Philip Morris was making

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the claim or was being claimed against?
A. I don't.
Q. Would you characterize it mostly as a business dispute?
A. Yes, I would.
Q. Now, on how many different occasions have you given a deposition in a tobacco health-related matter?
A. Several. Probably six or so.
Q. Do you recall that you gave one to the -- some Florida lawyers in the Engle case?
A. Yes, I did.
Q. And in Broin?
A. Yes.
Q. And you gave one I think in the Minnesota proceedings?
A. I did.
Q. Minnesota State AG proceedings? In the Engle and Broin depositions were you appearing as Ellen Merlo or as the person most knowledgeable for Philip Morris?
A. Hmm. I believe as person most knowledgeable for Philip Morris on whatever the topic was.
Q. Do you remember what the topic was that you were designated? Topic or topics?
A. Some of our marketing practices, youth smoking prevention, event sponsorships. I believe that -- those

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were.
Q. And each of those, Engle and Broin, were a one-day proceeding? One day or less?
A. Yes.
Q. The Minnesota State AG proceeding, was that a one-day proceeding, as well?
A. It was.
Q. And were you testifying as Ellen Merlo or as the person most knowledgeable?
A. In Minnesota?
Q. Yes.
A. Person most knowledgeable.
Q. On the same topics as in Engle and Broin?
A. I believe that was the youth smoking prevention.
Q. Do you have any information as to why you didn't testify in the state -- in the trial of the Minnesota State case?
A. I don't.

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Q. Do you know whether your deposition was read into evidence in that case?
A. In Minnesota?
Q. In Minnesota.
A. I don't know.
Q. Have you testified in any of the other state AG actions?

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A. I believe that Minnesota was the only state AG action. I can't recall, but I believe the rest were individual cases.
Q. Do you remember the names of those cases or the states or anything about them that could help me find them?
A. I testified in a case in New York, in Brooklyn. I don't remember the name of the case. And in Washington State.
Q. Did the Washington State -- did any of the cases in which you testified involve labor unions as claimants?
A. Yes.
Q. And the Washington State action and the New York City action were both individual smokers or their survivors with disease-related claims?
A. To my recollection, that's correct.
Q. Do you know if either of those cases ever went to trial?
A. I know the New York one did not. I don't -- I don't believe the Washington one did, but I -- I'm not sure.
Q. Any other cases other than we've enumerated, five so far, any other cases that you think you've been deposed in in tobacco health-related matters?
A. Yes. Cipollone.
Q. Do you know when in the Cipollone process you testified, either by year or between the two trial dates or

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before the first trial date?
A. It was before the first trial date. It was fairly early on in the proceedings.
Q. And did you testify there as the person most knowledgeable or as Ellen Merlo?
A. I believe at the time it was person most knowledgeable.
Q. On what topic?
A. On some of our brand advertising, most specifically Virginia Slims and Parliament.
Q. Do you remember the year or roughly the year of that testimony?
A. I knew you would ask me that. I really don't. I would have to say -- I really don't remember the year.
Q. Does mid '80s sound right?
A. Sometime, I was going to say early, early to mid '80s, but --
Q. Do you remember where you gave that deposition?
A. Yes. It was in New Jersey. Trenton? I think it was Trenton.
Q. Have any of your -- have we now exhausted all of the tobacco health-related depositions?
A. To my recollection we have, yes.
Q. Was any of the testimony in those six cases videotaped?

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A. Yes.
Q. Do you know which ones were videotaped?
A. Only Minnesota.

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Q. Have you ever been a participant in a mock deposition?
^ MR. COFER: Objection. Instruction not to answer. Work product, attorney-client privilege.
MR. LADD: Okay. I think -- I'm not planning to get into the substance of it, but I think the existence of it is relevant for both experience testifying and generally how you went about preparing for the deposition.
MR. COFER: No, I'm going to stand on that objection.
MR. LADD: Okay. And can we agree that I don't have to ask the subsidiary questions?
MR. COFER: Yes, we can.
MR. LADD: That if I ever get a ruling overruling that objection, I could cover the scope of that and kind of get whatever was implied by that question?
MR. COFER: Yes, you can.
MR. LADD: Q. Did you ever view your video deposition, the one taken in Minnesota?
A. I'm sorry?
Q. Did you ever view the deposition that was taken in Minnesota?

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A. No, I have not.
Q. Have you ever read any of your depositions after you gave them?
A. Yes, I have.
Q. Have you read each of them?
A. Yes.
Q. And have you read any of those depositions within the last three weeks?
A. No, I have not.
Q. Have you in the last three weeks reviewed any of the documents related to the subject of this deposition?
^ MR. COFER: To the extent that that calls for documents reviewed with counsel in preparation for this deposition, I will say that the only documents that we showed Ms. Merlo were the ones we produced to you, to make certain that those were in fact the documents from her files that were pertinent to your request. And I will instruct her not to answer any other questions with respect to review of those documents in preparation for the dep.
MR. LADD: Q. Is that correct, that the only documents you reviewed with counsel were the documents that have been produced?
A. Yes, that is correct.
Q. And how long ago did you do that review?
A. Yesterday.

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Q. Okay. And approximately how much time did you spend looking at those documents?
A. Less than an hour.
Q. So I take it you did not read them line by line in that amount of time?
A. I did not.
Q. Have you, other than with counsel, reviewed any documents in the last three weeks related to the purpose of this deposition? And I don't mean contemporaneous documents that just your work in this field require.
A. I have not.
Q. Have you done anything else in preparation for this deposition other than your meeting with counsel yesterday?

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A. No.
Q. So you haven't asked anybody else their memory of events, for example?
A. In fact, I've been on vacation for the last several weeks.
Q. So the answer is no?
A. The answer is no.
Q. And nor have you gone over any diaries or logs or things that would allow you to better check the sequence of events?
A. I have not.

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Q. Do you maintain or does your secretary maintain a calendar?
A. Of appointments, you mean?
Q. Either a calendar of appointments or calendars of to-do lists for particular dates?
A. I have a calendar of appointments.
Q. And is that just something on a piece of paper? Or is that computerized?
A. Both.
Q. And are the two of them the same? Or are the two of them different?
A. They're pretty much the same.
Q. Is the paper version just a printout of the computer version?
A. No. I have a desk calendar in my office that I -- I tend to use to know what my next appointment is. And then there is a computerized version of the same thing.
Q. Do you know if the computer version is capable of reporting historically what was on the calendar, say, six months ago, a year ago?
A. I mean it -- I assume that the old calendar records are in the computer.
Q. Okay.
A. I have not, by the way, used a computerized calendar for very long.

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Q. Okay. Prior to the time you started using a computerized calendar, did someone else maintain a computerized calendar for you?
A. No.
Q. So at that point you just had the paper copy?
A. That's correct.
Q. Do you retain your paper copies of your calendars at the end of the year?
A. I do.
Q. And as far back as you've worked with Philip Morris?
A. I don't know that I have 30 years' worth of calendars, but I have quite a few of my old calendars.
Q. And no plans upcoming to toss them out, I assume?
A. No.
Q. Did you have any log-in procedure for keeping track of documents related to the website? An index or essentially a docket of what you had received to show when you got it, where you put it, et cetera?
A. No.
Q. So the physical pieces of paper that we see here were I assume at one point in folders, file folders?
A. That's right.
Q. That would have had labels on them?
A. Correct.

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00060
Q. But no index or table of contents?
A. That's correct.
Q. And is that in accordance with your normal procedure?
A. Yes.
Q. Is it the normal procedure of Philip Morris at any point to create an index or table of contents of files perhaps as they go into storage?
A. As they go into storage, yes.
Q. Okay. And other than that, is that done?
A. My secretary would have a listing of the files -- I mean she knows what topics she has in the file in case she has to retrieve something.
Q. Topics being essentially the label on the file folder?
A. That's correct.
Q. Do you know how many physical files this pile of materials came from, the one that's being produced related to this deposition?
A. I really don't, because I wasn't -- I wasn't in the office when they were gathered.
Q. And I take it that you can -- because of your review previously, you can tell us that all of these documents appear to be documents that came from your files related to the website?
00061
A. That's correct.
Q. But I take it under the circumstances you can't represent that it's a complete set?
A. It's a complete set of what I had in my files.
Q. How do you know that?
A. Because I spoke with my secretary and she told me it was a complete set of what she had on any website materials.
Q. Okay. But it was she who was in charge of locating them?
A. It was she who was in charge. There were some files on my desk which I pointed her towards, since I was not in the office, and she also included those.
Q. Do you have any files related to the website at any location other than either your personal office or in your secretary's, the file area maintained by your secretary?
A. I do not.
Q. You don't have any at home, for example?
A. No.
Q. Do you have any that are in computer-accessible form, on a laptop or somewhere other than physically at your office?
A. No.
Q. Were there any -- the pages that I have seen have
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all been basically 8-1/2 by 11 inch copies of material. Do you know whether in connection with the involvement you had with the website whether there were any blow-ups or poster boards or display sheets or, you know, butcher paper sheet of discussion points, anything like that?
A. There were a few blow-ups of the actual website -- pages that are now the website on poster board for presentation purposes, but they were actually taken from the website, so --
Q. There weren't any changes to the website

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subsequent to those poster boards?
A. Not what I would call substantive changes.
Q. There are a number of drafts in here of the various website pages. Would it be your belief that the blow-ups -- there would be an 8-1/2 by 11 inch corresponding page to every blow-up that was created?
A. Yes.
Q. Did any of the meetings -- I take it there were a series of meetings at which the website was discussed?
A. That's correct.
Q. And some of these -- would any of these have been one-on-one meetings? You and one other person?
A. More often than not they were more than one person.
Q. At any of those meetings were either overhead

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projectors used or projection equipment that can show a computer screen up on the wall?
A. Yes.
Q. And would there be a corresponding paper copy of everything that fit into that category?
A. Yes.
Q. Were there people who reported to you with respect to the design of the website?
A. Yes.
Q. Did you report to anyone with respect to the website issue?
A. Yes.
Q. And was that to Mr. Scymanczyk?
A. Yes.
Q. To anyone else?
A. I would on occasion share status of what was going on with the website with my colleagues on the senior management team reporting to Mr. Scymanczyk.
Q. Now, could you identify for me the people who were Philip Morris employees who reported to you with respect to the website?
A. Yes. Michael Pfeil, P-F-E-I-L. And Sean, S-E-A-N, Gannon, G-A-N-N-O-N.
Q. Anyone else.
A. No, not really.

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Q. Did your secretary have any duties with respect to this work?
A. Scheduling meetings and, you know, making copies of things. But not -- not any different than her normal duties on anything else she would do.
Q. Did you draft anything yourself in the sense of either taking pen to paper, keyboard to screen, with respect to this project?
A. The only thing that I worked on that would have been part of my input was the preamble to our website.
Q. The one that says Tobacco Issues on the top?
A. Yeah, well, it really says what our values are and why -- why this website, being dedicated to adult choice, et cetera.
Q. Were there any attorneys involved -- and I'm just looking for names at this stage -- related in any way to the website?
A. Yes.
Q. And were some of those attorneys attorneys employed by Philip Morris companies, one or more Philip Morris companies?

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A. Yes.
Q. And who were -- can I call those inside lawyers? Is that fair?
A. Yes.

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Q. And who were they?
A. Steve Krigbaum.
Q. How do you spell his name?
A. K-R-I-G-B-A-U-M.
MR. COFER: Just to clarify the question, John, you will find that there are people who are lawyers by training and background who may not have lawyer jobs at Philip Morris. Do you want those people included, as well?
MR. LADD: No. People functioning as lawyers I think at this stage would make some sense.
MR. COFER: That may actually be a legal conclusion. Why don't we go ahead and list the people that -- if they're lawyers, whether they're currently holding a position as a lawyer.
MR. LADD: Okay.
MR. COFER: Just so we'll be inclusive.
THE WITNESS: Fine.
MR. COFER: Is that okay? Is that fair?
MR. LADD: I might have to clarify it in the back, but --
MR. COFER: Okay.
THE WITNESS: Mark Berlind, B-E-R-L-I-N-D. Denise Keane.
MR. LADD: Q. Is that the same Miss Keane that you discussed earlier?

00066

A. Yes, it is. David Nicoli. N-I-C-O-L-I.
Q. I'm sorry. His first name again was?
A. David.
Q. David.
A. David Greenberg.
Q. B-E-R-G?
A. G-R-E-E-N-B-E-R-G, yes. Who else was on the group? I think I've listed everybody.
Q. Okay. Ms. Keane was general counsel for Philip Morris?
A. She was. She is not now.
Q. Okay. Was she general counsel of Philip Morris at the time these discussions were ongoing?
A. No, she was not.
Q. What position did she have?
A. She is senior vice president of worldwide regulatory affairs.
Q. Do you consider that position to be a line management position?
A. It is a -- I think it would be considered more as a staff position, as it's corporate affairs.
Q. But at a management level?
A. At a -- yes, at a line manager's level, but the function is more of a staff.
Q. And it would be principally non-lawyers reporting

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to her in that position?
A. Both.
Q. But it's not considered to be part of the Philip Morris legal department?
A. It reports to the legal department, but it really is a function apart.

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Q. Mr. Krigbaum, do you know what department he is a member of?
A. The legal department.
Q. And at what level of seniority?
A. I believe -- is he associate?
MR. COFER: According to the glossary, for the privilege log, John, he's associate general counsel.
THE WITNESS: That's what I thought.
MR. LADD: Q. And do you know roughly how long he's been with the company?
A. I don't think he's been with the company all that long. A year or two, maybe. But I'm not sure.
Q. Do you know if he's served as an outside lawyer for Philip Morris prior to joining Philip Morris?
A. I really don't know his background. I don't know.
Q. Mr. -- I'm sorry, Berlind?
A. Um-hmm.
Q. What do you understand about his position or department?

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A. He reports to Ms. Keane, part of worldwide regulatory affairs.
Q. How about David Nicoli?
A. David Nicoli is vice president of issues management.
Q. And how is that related, if at all, to the legal department?
A. It's not.
Q. How long has he been with the company?
A. I'd say six -- six to eight years, maybe six years.
Q. Do you know if he was in private practice before?
A. I know he worked for one of the outside legal companies. I don't know which one, though.
Q. And on the Philip Morris account for one of those law firms?
A. I believe he did work on the Philip Morris account at one point, yes.
Q. Going back to Mr. Berlind, about how long has he been with Philip Morris?
A. I've known him for the last three or four years, so I don't know if he was with the company before, what he was doing before that.
Q. You don't know whether or not he was working in private practice for Philip Morris?

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A. I really do not.
Q. And Mr. Greenberg, the same general question.
A. Mr. Greenberg has been with the company over 10 years.
Q. And where does he fit in the structure of the company?
A. Well, at the time, he was vice president of planning and strategy development for Philip Morris Companies, Inc.
Q. And has he left that position?
A. Yes, he has.
Q. And what does he do now?
A. He's now vice president of corporate affairs for Philip Morris International.
Q. And I take it -- well, is there any relationship between his department and the legal department?
A. No.

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Q. Were there any non-lawyer outside contractors who were involved in this project?
A. Yes.
Q. And were they all from the same organization, or from more than one organization?
A. They were from more than one organization.
Q. Can you identify the organizations for me first, then we'll get to the people.

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A. Well, one person was Jim Lindheim, L-I-N-D-H-E-I-M, and he is self-employed, has his own company, Jim Lindheim and Associates. Jim Lindheim Company, I think, not associates.
And another is Peter Harris, H-A-R-R-I-S, also an independent consultant. Peter Harris Associates.
And then there were two Internet contractors, one called Giant Step and the other called Brand Dialogue.
Q. Brand Dialogue?
A. (Witness nods head.) Yes.
Q. G-U-E?
A. G-U-E.
Q. Do you remember the individuals who participated that were from Giant Step?
A. Jen Campbell. Jennifer Campbell was the -- kind of the account supervisor of the account.
Q. Did you yourself meet with anyone other than Jennifer Campbell?
A. Yes. There were several of the people that worked on the business. I would have to refer to notes to give you their names, though. I don't offhand remember.
Q. And do you remember the names of the people who were involved from Brand Dialogue?
A. I did not work with them as closely or regularly. And again, I would have to refer to notes to refresh my

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memory as to what the names of the people were.
Q. Were either Giant Step or Brand Dialogue involved at all in the content as opposed to the format of the site?
A. Can you just clarify what you mean?
Q. Were they involved at all in the choice of the words --
A. No.
Q. -- put on the page?
A. No.
Q. Were they at all involved in designing the concepts which were to be communicated by the words?
A. Yes, they were.
Q. Were there any individuals who were working with Mr. Lindheim who did work on this account, anybody who was his employee?
A. No.
Q. Is there anyone who is Peter Harris' employee who worked on this account?
A. No.
Q. How would you describe Mr. Lindheim's area of work?
A. Mr. Lindheim is a consultant to Philip Morris. He was previously president of Burson Marstellar, which was one of our public relations agencies, and his strong suit is both communications and also planning and process issues.

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So organizational process issues.
Q. Planning of what?

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A. Whatever. A project.
Q. And did he play that kind of a role in this particular project?
A. Yes.
Q. Now, you mentioned that he was previously president of Burson --
A. Burson Marstellar. B-U-R-S-O-N, M-A-R-S-T-E-L-L-A-R.
Q. To your knowledge, has he ever been employed by Philip Morris as an employee?
A. No, he never has.
Q. When he was at Burson Marstellar, did he work on any Philip Morris accounts?
A. He worked on -- yes, he worked on our account.
Q. And was he essentially full time on that, as far as you knew, for some period of years?
A. Well, he was president of the agency, so he wouldn't have been full time on our account.
Q. Got you. Sorry. That was a dumb question.
Mr. Harris, did he have any employees that were involved in this project?
A. No.
Q. How would you describe his line of work?

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A. He is very much like Mr. Lindheim. A consultant that works with us on communications and other issues that we may deal with as an industry.
He also does get involved in some research projects from the standpoint of positioning.
Q. Positioning of what?
A. Message points, things like that.
Q. And did Mr. Lindheim and Mr. Harris essentially do the same job but bringing the skills of two people to that job? Or was there a difference between their functions?
A. They tend to do -- there tends to be some overlap in what they do as consultants, and they do work together, even though they're both independents for us, on a lot of projects.
Q. Were there any attorneys involved on this project who were not employees of Philip Morris?
A. Not that -- not that I worked with, no.
Q. Was there an attempt to conceptually develop what Philip Morris wanted to communicate on the website prior to the start of actually drafting the words?
A. Yes.
Q. And well, I'm sorry, I jumped ahead of myself. Was there anyone else involved in this project that hasn't fallen into one of the categories I've talked to you about?
A. Yes. And I also -- you know, as I think of the

00074

other person that I'm going to mention is another lawyer, internal lawyer that I neglected to mention. Owen Smith.
Q. Owen Smith?
A. Um-hmm.
Q. Spelled the usual way?
A. Yes.
Q. And was he a member of the legal department?
A. He is -- he's chief counsel of Philip Morris International.
Q. Okay.
A. And then David Dangoor, D-A-N-G-O-O-R, who at the time was senior vice president of corporate affairs and marketing for Philip Morris International.

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Q. I notice that on the website that has the tobacco health issues that there is a link to a Philip Morris International site.
A. That's correct.
Q. Is that a site that preexisted the current website?
A. No.
Q. Was it developed at the same time?
A. Yes.
Q. Anyone else that was involved on this project that you can recall?
A. There were some people from IS, information

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services, that -- Ken Michaelchuck who was the head of IS for Philip Morris Companies, Inc.
Q. IS being information services?
A. Information services, right. And at a point in the project when we started to move ahead after some of the initial meetings we named Claire Purcell as someone who was responsible for kind of organizing the task force and organizing the meetings and calling the groups together on a day-to-day basis.
Q. So kind of an operational project manager?
A. Yes. And there was another member of the task force, Victor Han, H-A-N, who is the head of communications for Philip Morris Companies, Inc.
Q. Now, was there --
A. I think that's the group.
Q. What was the highest management level that made some decision with respect to the website?
A. CEO.
Q. It was not presented to the board in advance?
A. Not for approval, no.
Q. Was it presented to the board for either comment or informationally prior to the time that it was made public?
A. Because I don't attend board meetings, I don't know if it was presented to the board right before it became

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public or right after. But I know it was presented at one of the board meetings right around the time that it was going live.
Q. But not for approval?
A. Not for approval. For information.
Q. Do you know whether any members of the board had any input into the site?
A. To my knowledge, they did not.
Q. Now, when Mr. Scymanczyk approved the site, did he -- I take it he had your recommendation to go on?
A. That's correct.
Q. In part? Was there any other management group that considered the site and made a recommendation to Mr. Scymanczyk?
A. No.
MR. COFER: Earlier, when you said the decision was made by the CEO, were you referring to Geoff Bible or Mr. Scymanczyk?
THE WITNESS: Both. There's the overall corporate site that Mr. Bible approved, and Mr. Bible also saw the recommendation for the PMUSA specific site as well as the PM International specific site and approved them all. But Mr. Scymanczyk approved the PMUSA site, as well, on an ongoing basis.

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MR. LADD: Q. How do you spell Mr. Bible's first
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name?
A. G-E-O-F-F-R-E-Y.
Q. Was there any review at kind of a management committee level of the website before Mr. Bible or Mr. Scymanczyk gave their approval?
A. I don't believe.
MR. COFER: Do you understand the question?
THE WITNESS: Yeah, I'm not --
MR. LADD: Q. Let me try to be clear. You identified a bunch of people who I take it mostly reported to you?
A. No.
Q. Oh, okay.
A. Not at all.
Q. The group of people that you discussed, what was their reporting relationship kind of as a group?
A. Actually, there was the corporate website that -- and there was a task force assembled to deal with that. And Denise Keane was chairman of the task force.
MR. COFER: When you say corporate website, do you mean Philip Morris Companies?
MR. COFER: I do. Companies, Inc.
MR. LADD: Q. And would all the people on that task force have been amongst the group that you named for me?
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A. That was the group that I named for you.
Q. Okay.
A. With the exception of the two people that you asked about that reported to me.
Q. And so you were a member of that task force?
A. I was. That's correct.
Q. And that task force -- did that task force make their recommendation to anyone other than Mr. Bible and Mr. Scymanczyk?
A. Yes.
Q. Okay. Who did they make their recommendation to?
A. Also to Mr. Bring.
Q. How do you spell his name?
A. B-R-I-N-G.
Q. First name, please?
A. Murray.
Q. And to anyone else?
A. Mr. Webb, William Webb.
Q. Anyone else?
A. I believe that was the group that ultimately signed off.
Q. And who was Mr. Bring?
A. Mr. Bring?
Q. Bring.
A. Mr. Bring is vice-chairman, general counsel of the
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organization.
Q. Of Philip Morris Companies, Inc.?
A. Inc. (Witness nods head.)
Q. And who is Mr. Webb?
A. He is president of Philip Morris Companies, Inc.
Q. And was the site approved by someone from Philip Morris International?
A. The Philip Morris International site was approved by Paul Hendreys, H-E-N-D-R-E-Y-S, who was president and CEO

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for Philip Morris International.
Q. Sorry. Hendreys?
A. H-E-N-D-R-E-Y-S.
Q. First name was Paul?
A. Paul.
Q. What position is he with Philip Morris International?
A. President and CEO, Philip Morris International.
Q. Other than the task force and the various individuals, was there any management group that met and gave a recommendation on the project?
A. I don't believe so, no. It was the task force.
MR. LADD: Should we think about lunch?
MR. COFER: It should be here.
(Lunch recess - 12:23 to 12:45 pm.)
MR. LADD: Q. Just as a clarification, Mr. Cofer

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has made a useful point, which is I think you've referred to occurrences at the corporate level. And my understanding is when you've used that phraseology, the corporation in question is Philip Morris Companies, Inc.
A. That's correct.
Q. And when you say the operational company, U.S.A., you're talking about that specifically?
A. That's correct.
(Exhibit 3 marked.)
MR. LADD: Q. Could you identify Merlo Exhibit 3 for me?
A. Yes. This is a press release that corporate issued prior to our launching our website and also some television advertising.
Q. And did the website become available to people with web browsers at or about this date of October 13th?
A. That's correct.
Q. Actually, I'm going to go back and backtrack on you. I realize there are a couple of questions I didn't ask before. I'm going to have to jump around a little bit.
When you stopped smoking in roughly 1965 or 1966, were health considerations involved at all?
A. No.
Q. Do you remember whether you noticed the warning label on the packages prior to the time you quit?

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A. I don't remember.
Q. Did you remember at the time you started at age 18 whether you had heard adverse health information about cigarettes?
A. Oh, sure.
Q. And can you tell me what had been your state of mind with respect to the health issues and smoking as of the time you started smoking?
A. I was aware of the fact that cigarettes were not good for you; that there were some health implications to smoking, which was why my parents would not allow me to smoke when I was younger. Because as I recall at that time there were no minimum age laws as far as purchasing cigarettes. So I was always aware of the fact that cigarettes were viewed as having health implications associated with them. I mean when I was growing up, even back then people referred to cigarettes as coffin nails, as I recall. So it was -- it was kind of top of mind.
Q. Do you ever recall what credence you gave to that health information at that time?

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A. It's hard to think back 35 years and to know exactly what I was thinking at that time, but I'm sure I realized that it was a risky behavior that I was getting involved in.
Q. So you had not only heard health information, but

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you believed that information, at least to a certain extent?
A. I believe I did, yes.
Q. Do you recall your initial reactions -- do you recall having reactions to the package warnings at any time prior to your first employment with Philip Morris?
A. Offhand, no, I don't.
Q. What group -- you mentioned that in the development of the website that a view was developed first as to the concept or the message that you wanted to convey before the actual language was developed. Am I paraphrasing what you testified to before more or less correctly?
A. Yes, I would say that's right.
Q. Okay. What group developed the message? What person or what group developed the message?
A. Well, I mean there were many messages. As you know, the website is extensive and it really encompasses the kind of corporate website.
The overarching website is meant to communicate to people the essence of Philip Morris, its products, its people, its activities, its operating companies and the issues that surround its various businesses and the industries that we're involved in. So I mean there's the broad website.
Then there's the Philip Morris U.S.A. website that was developed concurrent with the corporate website which

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also is broad in its scope in that it addresses some of our issues pertaining to our product, but it also talks about some of our programs like youth smoking prevention and accommodation and, as you indicated before, the government affairs page, and our own internal values and marketing codes and et cetera.
And I would say that the overarching kind of guidelines that we set for ourselves both from a corporate standpoint and from the standpoint of Philip Morris U.S.A. specifically is to try to adhere to our values in being as open, honest and sharing as much information about all of the topics that we were going to be addressing on the website as we possibly could.
Q. Did Philip Morris, either Philip Morris Companies, Inc. or Philip Morris U.S.A., have a mission statement prior to the website?
A. Oh, yes.
Q. And had you participated at all in development of the mission statement?
A. Yes, I did. Well, the mission statement -- the mission statement itself was really -- the mission statement that you see on the Philip Morris website was really developed primarily by Mike Scymanczyk, the one you see on the PMUSA website. The values that support that mission statement were developed with Mike and his senior management

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team.
Q. Approximately when?
A. Approximately early to mid 1998.
Q. And I take it that the mission statement and the values were used in various corporate communications from

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that point up to and including the website?
A. Absolutely.
Q. When it got to portions of the website more specific than the mission statement, who was it who developed the concepts that were going to be communicated? What person or group of persons?
A. I'm not sure I totally understand the question. But do you mean like what categories were we going to be covering? I'm not quite sure what you mean.
Q. Well, what I'm picking up on is I'm trying to draw the distinction between the concepts that are communicated and the words used to convey those concepts. And it may be that I can't ask a single question, I might have to ask a series of questions about different parts of the web page, and if so, just tell me that. But I'm trying to explore who it was who participated in the development of the concepts, whether that was the same group for the entire, say, PMUSA website or whether there were different groups of people for different parts of it.
A. All right. For the overarching corporate website,

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it was the task force that I described to you. And part -- the parts of the Philip Morris U.S.A. website that mirror what's on the corporate website were also decided upon by that task force.

Some of the other areas on the Philip Morris U.S.A. website like the accommodation area and the values and the governmental part of the website, some of that language already existed because they were existing programs, and what we did is we took materials that we already had and formatted them to go on the website.

Others we did some drafting, and that drafting could have been done by Sean Gannon and submitted to me or Mike Pfeil or we do have some internal writers that are on -- are part of my department that might have done some of the drafting for some of those things.

But on youth smoking prevention, for instance, we already have our position, our mission, our programs. And all we did is take that information and format it in a way that made it appropriate to access on the website. So there really wasn't drafting per se.
Q. Okay. If we set aside the portion of the website that is preexisting because it was mission statement related, and the portion of the website that was preexisting because it describes preexisting programs for which there already were descriptions.

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A. Right.
Q. There is, I take it, something else, something in addition to those two categories, in fact, probably a number of things in addition to those two categories on the website.
A. Correct.
Q. Speaking of just those categories, kind of what I might call the not-preexisting categories.
A. Correct.
Q. What group or what people developed the concepts that were to be communicated?
A. The task force.
Q. Okay. Anybody else other than the task force?
A. Really, conceptually, the direction, the focus, the goal of what we wanted to communicate and how we wanted to communicate was developed by the task force.

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The drafting that you're referring to was done primarily by Mark Berlind who really was the person that we went to to draft language for us.

Q. Staying on the conceptual level, and I'll get to the language level later. On the conceptual level, was there either a person or a working group of persons who gathered together proposed concepts that were then discussed in the task force?

A. Well, many of the things that are on the website

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as they pertain to some of our issues are obviously -- or are positions that Philip Morris has had or articulated for some time.

There were other issues like our commitment to the senate committee and the Hatch statement and the way we dealt with some of our issues that already existed. So there were -- there were positions and there was verbiage and there were message points that already existed. And again, it was a matter of how to -- how to draft them, how to pull all of that together to present it in a cohesive manner on the website.

Q. And who was it who did that?

A. Well, it was the task force. And if drafting or formatting had to take place, we tended to depend on Mark Berlind for that. That was pretty much his function as part of the task force.

Q. Was there a period of time where he was working close to full time on that project alone? Do you know?

A. He was spending a lot of time on it. I don't know that he neglected his other duties while he was doing it, but he certainly did spend a considerable amount of time, as did all of us who were working on this project.

Q. No discourtesy meant on doing this at the same time.

A. Not at all.

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Q. Just trying to streamline things for later on. In fact, if you just give me a minute, I'm going to finish off this pile so I won't have to continue to be distracted.

A. Sure.

(Discussion off the record.)

MR. LADD: Q. Sorry for the delay. At the time that the press release was set forth that's Exhibit 3 here, the website was made available, published essentially, have there been significant changes to the website between the date of that press release and the present?

A. Not significant changes. There have been some additions, but there have not been significant changes.

Q. And were the additions in the nature of sort of more supporting detail, more links to related sites?

A. More -- as new information becomes available, press releases, other things that have gone on, we may have added a few more links. But I would say substantially it is -- although because it's a website you keep freshening things as needed, it is really substantially what it was when it came live in mid-October.

Q. One example of the things that would have been added are materials or links to materials related to the federal government lawsuit against Philip Morris?

A. Exactly.

Q. For example?

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A. For example.

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Q. And that obviously could not have gone on the website when it was first published, because that suit hadn't been filed yet.
A. That's right.
Q. I'm going to make a representation which I probably can't read into the record, but I just want to get your response to it. There are some broken links on the website. Do you know if there's somebody whose job it is to make sure that the links stay up?
A. There are some broken links?
Q. Right.
A. Yes. Giant Step for PMUSA, and Brand Dialogue for the corporate website. And in my department, PMUSA, Sean Gannon. So if we were aware -- there's supposed to be a regular auditing going on.
Q. Okay. And is that process automated in some fashion? Or does somebody just click on each link?
A. I don't know that I can answer that for you.
Q. Okay.
MR. COFER: Are you saying there are broken links?
MR. LADD: Yes, there were as of last night, anyway. And they were internal links, they weren't links --
THE WITNESS: Like some key --
MR. LADD: Q. Yes. There was a broken link

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between -- on the additives page. Not to the big long ingredients list, but to some of the other ingredients links. I may be able, when we get to that part, look.
A. All right. Well, that would be something that they should be auditing and somebody should be picking it up. I know we had other problems, our government affairs page, and it was picked up immediately and corrected.
Q. And I take it that's something that you -- when you find out there are mistakes like that, you want to correct them?
A. Absolutely. Yes.
MR. LADD: I'm going to mark as a collective Exhibit 4 some pages printed on my printer.
MR. COFER: Could you describe that for the record, John?
MR. LADD: Yes, these are just pages that I copied last night. This certainly is no where near complete on the website, which is quite large, but a number of the sections that fall under the heading "Our Responsibility."
THE WITNESS: Right.
MR. LADD: Q. And actually, could you just flip through the pages?
A. Yes, I can.
Q. I printed this thing on used paper just because I was trying to save paper. Unfortunately, your efficient

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copy service has printed the back sides, also. Oh, well. I know I should have put instructions on this thing, you know, just copy the front side. But I apologize for all the junk on the back of these pages.
MS. SPANGLER: Usually you have the opposite problem. You want both sides copied and you don't get it.
MR. LADD: It never occurred to me.
Q. With respect to the front sides of Exhibit 4, you recognize those each as pages within the Philip Morris jobsite -- website under the general heading of Our Responsibility?
A. I do.

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Q. And was some of this material in existence in other forms of publication prior to the website coming up? Or was this written anew for the website?
A. This Our Responsibility piece? Yes.
Q. And where had it previously been published?
A. Well, it had been published as just a freestanding statement of our mission and values. It was published in our internal PMUSA-wide newsletter, In The Loop. Something -- you know, our mission and values have been shared with every employee in the company in individual meetings, and we've got cards that have them on it that every employee has, et cetera. So they're pretty extensively distributed within the company, and to some

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outside people, too, who might have been interested in our mission and values.
Q. Do you know if a version of this has ever been included in the Philip Morris annual report?
A. I do not believe that. Not to this extent. I believe that we reference the fact that we developed mission and values for PMUSA, but I don't believe that this has ever been printed in the annual report.
Q. Were any of the subheadings under Our Responsibility prepared for the first time for the website?
A. And you're talking --
Q. I'm talking about the list --
A. The whole --
Q. -- that's underneath on the left-hand column of page 1 on Merlo Exhibit 4, Positive Youth Development all the way down to Expert Quotes.
A. Nothing was created new for the website. Again, it may have been reformatted or edited to go on the website, but everything that we discuss here are documents or position papers or guidelines or something that we had already developed because it was something that we were already doing, be it grant -- how to apply for a charitable grant. I mean those guidelines had already been developed before the website. Or the expert quotes even under Youth Smoking Prevention were things that we had already

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referenced in other materials that we had developed for youth smoking prevention, et cetera. So none of it was new information, to my knowledge.
Q. All right. And I take it that each of the statements in here are carefully-thought-through corporate-level positions?
A. The Philip Morris U.S.A. information specifically would have been information on all this that would have certainly reached senior management, the senior management team, Mike Scymanczyk's senior management team level.
Q. And these are statements that you want to have kind of taken seriously, both by your own employees and by members of the public?
A. Well, when it comes to our mission and values, it is what we assume will guide every employee in the company, so we absolutely want it taken seriously.
MR. LADD: I'll mark as Exhibit No. 5, just as a representation of what I believe this to be. I'm going to ask the witness if it is in fact that. There is a page printed from the site map in order to kind of give an overview of what follows. And then there are each of the top-level pages underneath the Tobacco Issues page on the Philip Morris U.S.A. website. I hope. And one or two

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second-level pages.
(Exhibit 5 marked.)

THE WITNESS: Yeah, these actually are -- at least this first page that I come to is the corporate website. It is not the Philip Morris U.S.A. website.
MR. LADD: Q. Okay.
A. These are kind of global statements about the corporate position on these issues. And Philip Morris U.S.A. obviously shares the corporate position. So you will find many of these pages repeated on the Philip Morris U.S.A. specific website.
Q. Okay.
A. But this one comes from the corporate page (indicating). And you can tell because you would then go to Tobacco in the U.S.A. which would get you to Philip Morris U.S.A. or Tobacco Around the World.
MR. COFER: And for the record, you are referring to the second page in composite page Merlo Exhibit 5, correct?
THE WITNESS: Yes.
MR. LADD: Q. The page that essentially has the caption Why Discuss Tobacco Issues?
A. Yes. In fact, I would make the same statement about the ensuing pages. They all are the -- here we come to the one that says Quitting Smoking, you printed out from the Philip Morris U.S.A. website.
Q. Okay.

A. Because you can see the heading here (indicating). But everything up until that came from the corporate website.
Q. And would there -- on that, say, Quitting Smoking page, would that identical text appear under the Philip Morris Companies heading reached through another route on the website?
A. I'm not sure if there is a page on quitting smoking on the corporate website. I would have to actually go in and surf on this site to know.
As I say, the kind of global positioning of the company is on the corporate site, and then Philip Morris U.S.A.'s site is -- repeats that information, but obviously there's far more on our website concerning our issues than there are on the corporate site.
Q. The cover page on Exhibit 5 is a Philip Morris Companies, Inc. page; is that correct?
A. That's correct.
Q. And underneath the heading Tobacco Issues, there is a Quitting Smoking page listed?
A. Oh, there is. So yes, there would be one.
Q. So that does suggest --
A. Yes, that's right.
Q. -- this page that we've just been discussing or these two pages we've been discussing?

A. So everything that you see listed here would be on the corporate site as well as the Philip Morris U.S.A. site.
Q. Starting with Tobacco Issues and ending on Secondhand Smoke?
A. That's correct.
Q. Now, in that packet that you have, immediately following the Quitting Smoking page or two pages there is a document that I found by clicking on one of your links that

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appears to be an external document, unless I'm --
A. This one (indicating)?
Q. The How To Quit page.
A. The tips page?
Q. Yes.
A. The tips. Right. From the CDC. Centers for Disease Control.
Q. Now, is that information that is actually pages physically maintained on a Philip Morris computer? Or is that just a link to some external page?
A. There's just a link.
Q. Okay. And that would be true throughout this set of pages, in that some of the links are to Philip Morris internal documents and some of the links are to external documents?
A. That's correct. For instance, where you say -- here it says "Click here for ingredients in Philip Morris

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U.S.A.'s brands," that would be an internal link.
Q. Okay.
A. Above that, it says "Click here for information from the U.S. Department of Agriculture," that would be an external link. So some of them are internal, some of them are external.
MR. LADD: Okay. Can we go off the record for a minute?
(Discussion off the record.)
MR. LADD: Q. Now, if you could turn to the page that it follows the page that in the lower right-hand corner is identified as a 404 error page, there's something called Non-Tobacco Materials. Is this the kind of example of an internal link we might find at Philip Morris from a website page to an internal Philip Morris document?
A. Yes.
Q. And the same with respect to the Cigarette Ventilation page which follows?
A. Correct.
Q. And then the Secondhand Smoke pages that follow, again, are a higher-level page in the hierarchy?
A. Correct.
Q. Now, at the end of this collective Exhibit 5, there's something called Site Policies, four pages.
A. Um-hmm. Yes.

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Q. Did you have any involvement at all in the language on the Site Policies pages?
A. Involvement, again, in discussing conceptually some of the things that we wanted to ensure vis-a-vis on privacy, trademarks, some of those things. But I did not get involved in drafting.
Q. Now, was this language something that preexisted the development of this current website?
A. Some of it is preexisting because it is considered I think standard operating procedure for people who have websites on the way you would express certain things about accuracy and some of the other things.
Some of it, like Company Structure, would have come out of some existing description of our company structure.
And other parts of it that would refer to the links and how we made them available would have had to have been drafted anew, because we never had a website before.
So again, I think it's a mixture of things that we

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already had as policies and some that had to be drafted because we were going into a new medium.
Q. I had a specific question. You see the paragraphs there called Links?
A. Yes.
Q. And it recites that the -- if I understand it

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right, the Philip Morris site, both corporate and U.S.A., includes links to other sites as you and I have just discussed. Is that right?
A. That's correct.
Q. And some of those links are operated by Philip Morris Companies and some of them are operated by totally independent parties.
A. That's correct.
Q. Often governmental parties.
A. That's correct.
Q. Now, the statement down a couple of sentences down there, I'm going to read it into the record. If you could just follow along and make sure I'm not misreading it. Do you see where it says "Third party sites"?
A. Yes.
Q. "Third party sites may contain information with which with Philip Morris does or does not agree."
Was there any discussion in the task force of that language?
A. I don't remember any specific discussion. I believe we just indicated that we were going to provide links to any relevant information, whether it reflected our point of view or not, and that we would let people know -- I mean I don't think there was more discussion than that that that language had to go in.

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Q. Does that disclaimer mean that just because a piece of information can be linked from the Philip Morris website doesn't mean that you necessarily think that that piece of information is correct? Is that --
A. It may or may not.
Q. May or may not be correct. I can't tell just because it's linked?
A. Can't tell because it's linked. And quite frankly, no one on the task force read the full text of everything we linked to. So don't know.
Q. Now, was there any effort made to indicate in the text of the Philip Morris page as to whether Philip Morris believed or didn't believe the information contained with respect to a particular link?
A. No. What we sought to do was to provide as much information from as many credible sources as we could access to give people as full a picture on any given issue as we possibly could, and not necessarily reflect our point of view but a consensus opinion of experts in whatever area we were linking to or the area that we were including on our website.
Q. So that kind of the criteria for linking to it was that it was pertinent to the topic being discussed?
A. Exactly right.
Q. And from a credible source? Not necessarily that

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they were accurate in this particular statement --
A. But a credible recognized source that would have some status to discuss that issue.
Q. Okay. A source that the visitor to the web page

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ought to consider in connection with the topic in question?
A. That's correct.
Q. But that's kind of the limit of the endorsement of the outside links?
A. That -- that is.
(Exhibit 6 marked.)
MR. LADD: Q. Ms. Merlo, I wonder if you recognize these pages as a very small portion of the Governmental Issues website?
A. I do.
Q. Maintained by Philip Morris. And I have following some links to California and to the Governor of California, for example. Similar links would exist to other states?
A. That's right.
Q. And what was the purpose of including in the website the material that appears on Merlo 6?
A. Well, there were several reasons. First, to discuss some of the issues that we think are pertinent to our industry and our consumers that they have expressed an interest in in the past and have been -- wanted to take an active role in voicing their opinion or understanding what

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the issues were. So having kind of a recap of those issues we thought from an informational standpoint was an important thing to do.
And then giving people access to opinion leaders, legislators, et cetera, through the link of a website, because again, many of the people that we deal with, many of our consumers -- in fact, when I was talking to you before about consumer affairs, many of the consumers that we deal with will call up and say "Such and such is happening in my state, I would like to write to my Congressman, I would like to take a position, can you tell me how to go about doing that?" So this site also provides that capability of linking to various legislators by state.
Q. At the time the website was first published, what was the status of the national AG settlement in front of the U.S. Congress?
A. The --
Q. Was the proposed national settlement agreement long dead by the time --
A. Oh, yes.
Q. -- that this site came out?
A. Oh, yes.
Q. So that was never involved in this site?
A. No. The master settlement agreement had already been signed by the state attorneys general, so the June 20th

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agreement or proposal was long gone.
MR. LADD: I'm reminded to make sure that I have your permission to go through the back sides of those things before I let you walk off with them, just in case there's anything confidential on the back.
MR. COFER: Sure. Absolutely.
MR. LADD: I'd be kind of surprised if there is, but I want to do that with your copy and the court reporter's copy.
MR. COFER: That's fine.
MR. LADD: Q. Is it fair to say that one of the functions that this series of pages provides is that it facilitates one of your customers communicating with his legislators on both the state and federal level?
A. A consumer.

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Q. Consumer?
A. Or customer, for that matter. We distinguish between consumers and customers. Customers are people that are in the industry that we sell to, and consumers are the general public. But both. Anyone who would have access to the site could, yes, communicate with their legislator.
Q. Does Philip Morris -- one of the things that one of your consumers can do is it can go to a site and say "I want to write my Congressman," and it will provide an E-mail form addressed to that Congressman.

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A. That's right.
Q. On which the consumer can type his own opinion?
A. Type a message, yes.
Q. Are there any portions of the site where the consumer is given the option of accepting language that Philip Morris has drafted?
A. No, not to my knowledge. I mean they can -- they can look at our position on issues and they can turn that into something in their own words. But we don't -- we don't preprint. At least to my knowledge, we don't.
Q. So there isn't a place that you can say "If you believe in X, click here"?
A. "And send this message"?
Q. And send that message?
A. No, we haven't done that.
Q. Okay. Did you provide any mechanism to your customers or anyone else to communicate with the Congress on the national AG's deal by a 1-800 number or by any other method?
A. On the website?
Q. No, no. By a different method. Now I'm asking a pre-website question.
A. You're talking now about the Congress and June 20th as opposed to the AG settlement?
MR. LADD: Yes.

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MR. COFER: Which settlement?
MR. LADD: I'm talking about the original AG June 20th proposed settlement that ended up being considered by the U.S. Congress. And there was a period of time where Philip Morris supported some Congressional legislation related to that settlement, implementing that settlement agreement.
MR. COFER: But it was more than an AG settlement, correct?
THE WITNESS: Yes.
MR. COFER: That's where we're getting confused.
MR. LADD: Can I just call it the June 20th settlement?
THE WITNESS: It was June 20th and then became proposed legislation based on the June 20th settlement. And Philip Morris was part of an industry effort which we supported. It was not an individual Philip Morris effort. It was an industry effort to help to facilitate people making their opinions known on the settlement, yes.
MR. LADD: Q. Okay. And was that done at the time when Philip Morris was supporting the legislation then proposed in the Congress?
A. Both.
Q. And because you know the "both" and the jury may not --

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A. Both when we were --
Q. There was a time when Philip Morris, because of changes in what the Congress planned to do, Philip Morris --
A. Then --
Q. Philip Morris --
A. -- initially supported --
Q. Let me finish the question.
MR. COFER: Let him finish.
THE WITNESS: Sorry.
MR. LADD: Q. Philip Morris eventually opposed legislation that had been amended to be different from the legislation that Philip Morris had earlier supported?
A. That's correct.
MR. LADD: I said that badly, didn't I?
MR. COFER: Yes.
MR. LADD: Let me say it again.
Q. There was a period of time when the June 20th settlement agreement resulted in proposed legislation that Philip Morris and the rest of the industry supported. Correct?
MR. COFER: How about this? Philip Morris and the industry initially supported the proposed June 20 settlement, correct?
THE WITNESS: That's correct.
MR. LADD: Q. Including the legislative changes

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necessary to implement that settlement?
A. It never got to that point.
Q. Okay.
A. Legislative changes.
Supported the June 20th settlement becoming legislation that would implement that settlement or codify that settlement.
Q. Okay. And as that legislation went through the Congress, it was amended to the point where Philip Morris and the rest of the industry no longer supported the bills that were pending. Is that fair to say?
A. That's fair to say.
Q. Okay. And Philip Morris, as part of an industry group, helped to facilitate consumers in expressing their views, both before and after that development in Philip Morris' position?
A. That's correct.
Q. So both during the time when Philip Morris was supportive of the agreement and then when Philip Morris was opposed to some legislation which grew out of the agreement?
A. That would be correct.
Q. Okay. And how was that implemented? How was the consumer's ability to communicate to his Congressman facilitated?
A. It was implemented in several different ways.

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There were letters to consumers. We published something called The Smoker's Advocate, which is a publication that Philip Morris sends to a group of consumers who have expressed interest in expressing their thoughts on various issues, and we ran an article about the fact that we were supporting -- that we were supporting the agreement and hoped it would become legislation to codify it and asked people to show support in that respect.
And I believe there were even some phone mobilizations, again, of people who we knew to take an active interest in legislative issues, encouraging them to

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call to make their support initially known, and then when the legislation became onerous, to oppose that legislation through the 1-800 number that you referred to.
Q. Okay. Was there a time when someone from the industry would call a consumer and say "If you want to talk to your Congressman, I can put you through to him"?
A. Yes, we've done that.
Q. And in that instance, the oral communication from the citizen to his representative flowed through an industry-supported pipeline, essentially?
A. That -- that's correct.
Q. Were there ever transcripts of those communications kept, so you knew what the consumers were telling the congressmen?

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A. I don't know the answer to that. I don't believe so. I've not seen them.
Q. Okay.
A. Because our -- our position was that the consumer should voice their opinion to the congressman. But I don't know that for a fact.
Q. Were there times that the call was initiated from the tobacco industry to the individual consumer suggesting that the individual consumer might want to take advantage of the opportunity to contact his congressman?
A. There were times that that was done, yes.
Q. And is that done with the use of any list of consumer names that Philip Morris provided to whatever industry group was behind this plan?
A. Philip Morris, among others in the industry, supplied names, yes.
Q. So you would have a name of a consumer of your product that you thought might be interested in this issue. You would give that name to the industry group who would then call the consumer and say "I can connect you in to your congressman right now"?
A. That's correct, yes.
Q. And did Philip Morris do that both at the time it was supporting legislation and at the time it was opposing legislation?

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A. I don't know if we used that when we were supporting or not.
Q. You do recall, though, it was used when you opposed it?
A. I believe it was, yes.
Q. Do you know whether counts were maintained of how many calls were made in that fashion?
A. I do not.
Q. Did you ever know of any communication you got back from either congresspeople or their staff with respect to either how many calls they were getting or how the calls were running pro and con, or what impact it was having upon them?
A. Did I?
Q. Did anyone from Philip Morris, to your knowledge, receive such communications?
A. I don't know that they got -- I mean we would know -- we would know approximately how many calls were made. We didn't hear back officially that they were or were not having an impact.
Q. Would it be fair to say that when Philip Morris submitted the name -- what was the tobacco industry group

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that made the calls?
A. It would have been a contractor agreed upon by the entire industry. So I really don't know who that would be.

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Q. And the industry made financial contributions to that contractor?
A. To support that effort, that's correct.
Q. Now, would it be fair to say that Philip Morris would have expected the majority of the people who were on the list of names that it supplied to be opposed to the legislation at the time you were opposed to it?
A. I think that's a pretty fair assumption, yes.
MR. COFER: Could we go off the record for a second?
MR. LADD: Okay.
(Discussion off the record.)
MR. LADD: Q. Getting back to the website and specifically the governmental pages, one of the options offered on the website is to facilitate the visitor's ability to send an E-mail to his or her specific congressman.
A. That's correct.
Q. Both at the federal and the state levels.
A. That's correct.
Q. And so that if you put in your zip code or something, you can essentially get a message pad with the address of my congresswoman on it, for example?
A. That's right.
Q. So if I put in my zip code for my senators, I get

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Diane Feinstein and Barbara Boxer?
A. That's right.
Q. As senators. Then whoever my representative is?
A. That's correct.
Q. And I would be able to type my message and push a button that said Send, and it would go off to those congresspeople?
A. That's right. Presuming they had E-mail capability to get it, right.
Q. Right. And if they don't have E-mail capability to do it, you send it to somewhere where it's printed and delivered to them, I assume?
A. You know, I don't know the answer to that.
Q. All right. Do you know whether Philip Morris saves a copy of those messages?
A. No. This is a software package that my understanding is that we do not capture the activity once it's taking place.
Q. Okay. In other words, my message to my congressperson is personal to me?
A. That's right.
Q. You wouldn't be reading my mail?
A. No, I would not.
Q. Have you gathered any data as to the viewpoints of people who visit your website?

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A. Yes, we conducted some focus groups with people who have been to the website.
Q. And was the attempt to find a group that was representative of the website visitors?
A. We really did -- the focus grouping that we did on the website was really prior to its becoming live, so we took people through it to get their reaction to how they

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felt about the website.
Q. Okay. Is there any point in the website process where a questionnaire is presented to the visitor asking the visitor to express opinions on the quality of the website or whether it's -- he's a smoker or not or how old he is or anything like that?
A. Philip Morris U.S.A. has not done any questionnaire on the website. I'm not sure if corporate has done anything externally yet on the website or not.
Q. Has Philip Morris done any form of sampling to learn who it is who is visiting its website?
A. Except for kind of raw numbers of number of hits and where those hits come from, not to my knowledge.
Q. So you don't know how many are U.S. citizens versus Canadians?
A. You would know based on where the hit came from what country --
Q. Okay.

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A. -- people are accessing from. And the overwhelming majority is U.S. based.
Q. So you can tell the site address through which the person is communicating?
A. That's correct.
Q. If I communicated with you and I used PacBell as my service provider, you know that somebody called you through Pacbell.net?
A. Well, you're getting a bit more technical than I'm prepared to. But I do know that we are able to capture country of origin of where the actual hit came from and the number of hits that we get on an ongoing basis.
Q. Okay. Has an attempt been made to analyze that information other than on a country basis?
A. To date, I don't believe we have done anything more. We've really been tracking numbers and volume of hits as opposed to anything else.
Q. Do you know how many hits have come, for example, from sites that are identified K-12?
A. Again, you're beyond my --
Q. Okay.
A. -- technical expertise on this.
Q. Do you know it to be a fact that you can tell whether you're contacted by someone from a high school or grade school?

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A. Oh. No, I don't know that.
Q. Do you make any efforts at blocking any numbers to avoid communicating with children, for example?
A. We don't on our website because it is not a marketing website, as I'm sure you've observed. That was a discussion that we had. And we've been very circumspect with the exception of in the ingredients section, we don't -- and the tar and nicotine listings, we don't even mention our products. So all of the information that is on our website is really about our issues and our company, and there is no marketing activity as it relates to tobacco at all, so we do not age restrict.
Q. Have you registered the site with anything like Net Nanny or any of the other services that are designed to let parents control whether their children visit it on the web?
A. No, we have not.
(Brief recess in proceedings - 1:51 to 1:55 pm.)

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(Exhibits 7 through 9 marked.)
MR. LADD: Q. I think we're probably best just going through some exhibits and trying to identify them, then coming back through them again.
So I'm going to hand you Merlo 7 and represent to you probably that this is the text of a number of your website pages on the health issue. And if you could just

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flip through some random pages and see if you recognize the language is about the only thing I would ask you to do right now. Obviously, the formatting is different. I've just taken the text.
MR. COFER: Are we off the record?
MR. LADD: We can be.
MR. COFER: Okay.
(Discussion off the record.)
THE WITNESS: It definitely looks like information from the website.
MR. LADD: Exhibit 8 is what I believe to be the undated pages in the production of records. Oh, can we also go off the record for a moment?
(Discussion off the record.)
MR. LADD: We're marking as Exhibit 1-A a letter to me from Lucy Mason of Shook, Hardy & Bacon which represents some proposals to Ms. Mason which I accepted in part with respect to the limitations that would be made on the document review underlying this deposition.
MR. COFER: That's correct.
MR. LADD: It's my understanding that there may well be other documents at Philip Morris related to the website and that because the search was limited to Ms. Merlo's office and general environs that we are limited to what she had available to her.

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MR. COFER: That's exactly right. These documents that we have produced to you came from Ms. Merlo's office and her files on the website.
MR. LADD: And you understand that neither Madelyn Chaber's office nor my office have agreed permanently to waive any claim to ask for further documents. We've just agreed in order to facilitate this deposition happening today that that would be the first group of documents to search for.
MR. COFER: That's exactly right.
MR. LADD: Let's go off the record again for a moment.
(Discussion off the record.)
MR. LADD: I have taken -- this is a representation that I am making on the record. Shook, Hardy & Bacon delivered to me on Monday of this week a stack of material including a privilege log and a number of numbered documents. Do the numbers all come within a number range, starting with something and ending with something?
MR. COFER: Let me look. I'm not sure. I can find that out. It looks like they're Bates stamp numbers. And I did not do the copying, nor was I responsible for this production. Just looking at them, they appear to. And I'll find that out from the person who did it, is responsible for the actual production.

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MR. LADD: And I believe that the documents appear in general to start 20443 and 20444 -- I'm sorry, they all start 20444.

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MR. COFER: You know what we can do, I'll find out the number ranges and just send you a letter.
MR. LADD: Okay.
MR. COFER: If you want to attach that to the deposition, that's fine.
MR. LADD: Send a copy to the reporter, as well?
MR. COFER: Sure. We'll do that.
MR. LADD: Q. I'm going to make a representation about Exhibit 8, and if you, Ms. Merlo, will take a look at it just to see that I'm describing it correctly. Each of the Bates stamp numbered documents in this group is from the production of website-related documents taken from your office. And this particular group of documents all appear to be undated.
A. Yes.
Q. I see I made a mistake on the very second one.
A. Yes, that one is dated, as is the third one.
Q. Well, I guess with the exception of the ones that appear to have a date on them, they're all undated documents?
A. With exception of the ones that are dated, they're all undated.

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Q. That's fair enough. I'll come back and ask you some more intelligent questions, I hope.
I'm handing you now a copy of Merlo Exhibit 9. And perhaps, Mr. Cofer, this is more your bailiwick. This I understand to be the privilege log on documents that were located in Ms. Merlo's files related to the website but which have been withheld from production on the grounds of privilege?
MR. COFER: That's correct.
MR. LADD: Are there any of the documents that were produced that were produced in part with redactions?
MR. COFER: No.
MR. LADD: Okay. So these documents were either totally withheld or totally produced?
MR. COFER: That's correct.
MR. LADD: And your representation at this stage is that you believe that on each of the documents withheld that the entire document is subject to the privilege?
MR. COFER: I believe that's accurate, although I haven't personally studied the documents to see whether they are redactable or whether redacting them would essentially refute the act.
MR. LADD: I guess I would make for the record a request that do you so.
MR. COFER: Okay. I'll take it under advisement.

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MR. LADD: We're now on Exhibit 10.
(Exhibit 10 marked.)
MR. LADD: Q. I'm handing you, Ms. Merlo, a copy of Plaintiff's Exhibit 10 to this deposition, which I understand to be documents dated in April of 1999 located in your office area and related to the website. Does that appear to be correct?
A. Yes. April and May.
MR. LADD: Yes. Sorry. Can we simply reach a stipulation that with respect to all the numbered documents that appear in this series of exhibits that I'm going to mark, that each document is a true copy of a document in Philip Morris' file?
MR. COFER: You know, I don't know the answer to

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that. Let's look at the documents.
MR. LADD: Okay.
MR. COFER: I mean what I can tell you is that these are documents that were copied from the originals that were in Ms. Merlo's office. So they were in fact, you know, found in her files. And I think that's all I can tell you.
MR. LADD: Actually, there are going to be two stipulations I was going to suggest to save asking the questions. One is that each is a true copy of a piece of paper which is in the files, which doesn't mean much other than that it's a copy.

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MR. COFER: I think I can stipulate to that.
MR. LADD: And secondly, each document is what it purports to be. In other words, if it purports to be a letter from Smith to Jones, it is a letter from Smith to Jones, not some joke which was put in the file, which is the basic authentication question.
MR. COFER: You know, I think we may have to take those individually.
MR. LADD: Okay.
(Exhibit 11 marked.)
MR. LADD: Q. Ms. Merlo, could you look at this packet of collected material, Merlo Exhibit 11, and tell us whether it appears to be a collection of copies taken from your files of roughly the vintage June of 1999?
A. Yes.
Q. And is it fair to say that with respect to all of these numbered documents that were produced through Mr. Cofer's office, your secretary was in charge of gathering the materials?
A. Yes.
Q. And she was doing so pursuant to your direction and supervision?
A. My direction.
Q. Okay.
A. I was not in the office, so --

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Q. Okay. Your direction. And you believe her to be competent to do the tasks you asked her to do?
A. I do.
Q. And it's your understanding that she was to copy the documents accurately, in the sense of copying each page of a three-page letter, all three pages would be copied in full?
A. She would not have done the copying herself. She would have turned it over to someone in Legal who would have done the copying and then produced the document for you. So she would have turned over her entire file.
Q. And as far as you know, that copying was done accurately?
A. As far as I know, yes, it would have been done accurately.
Q. And as far as you know, each of the documents in that collection of documents is what it says it is in the sense that if it says it's a letter from you, it is in fact a letter from you, not a forgery of somebody else pretending to write a letter from you?
A. Anything that I have seen, you would be right in your assumption.
(Exhibit 12 marked.)
MR. LADD: Q. Ms. Merlo, I wish to see if you could confirm for me that this collective Exhibit 12 appears

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to be true copies of documents from your office related to the website dated roughly July, early July of 1999.
A. Well --
MR. COFER: Let's go off the record.
(Discussion off the record.)
MR. LADD: Let's go back on the record.
I am going to continue the process of marking as exhibits more or less in chronological order collections of materials from the production of the other day. And we'll ask the witness simply if the documents on a brief inspection appear to be what I say they are.
Mr. Cofer's office will review the documents within the next week?
MR. COFER: Week to 10 days.
MR. LADD: Week to 10 days, and indicate whether on any of the documents there are authenticity -- well, whether or not they're willing to stipulate that all of the documents are authentic in the sense that they are true copies of the documents which they purport to be on their face, so that a document that purports, for example, to have come from Philip Morris did in fact come from Philip Morris.
I think that's what we agreed to.
MR. COFER: Agreed.
MR. LADD: Q. Ms. Merlo, I'm going to hand you a copy of Exhibit 13.

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THE WITNESS: I don't think I ever answered 12.
MR. LADD: Okay. Sorry.
Q. Does it appear to you that Exhibit 12 is a collection of documents from your file dated roughly July of 1999 related to the website issue?
A. June and July.
Q. June and July? Thank you.
A. Yes.
(Exhibit 13 marked.)
MR. LADD: Q. Ms. Merlo, does it appear to you that Exhibit 13 is a collection of documents from your files related to the website dated roughly August of 1999?
A. Yes.
(Exhibit 14 marked.)
MR. LADD: Q. Now, Ms. Merlo, does Exhibit 14 appear to you to be documents from your file related to the website dated in the last half of August 1999?
A. Yes.
(Exhibit 15 marked.)
MR. COFER: Off the record.
(Discussion off the record.)
MR. LADD: Q. Ms. Merlo, does Exhibit 15 appear to you to be documents from your file related to the website dated roughly September of 1999?
A. Yes.

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(Exhibit 16 marked.)
MR. LADD: Q. Does Exhibit 16 appear to you to be a document from your files dated approximately September 9, 1999, related to the website?
A. Yes, it does.
Q. Now, I notice, could you just take a quick look at that document for me, and see if this appears to be one coherent, consistent document? Because there's some documents with different dates on them, but I believe them to be attachments to this September 9, 1999 packet of

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materials.
A. I believe that's correct, yes.
(Exhibit 17 marked.)
MR. LADD: Q. Ms. Merlo, does this collective Exhibit 17 appear to you to be materials from your file related to the website dated roughly mid-September of 1999?
A. Yes. Yes, it does.
(Exhibit 18 marked.)
MR. LADD: Q. Ms. Merlo, does composite Exhibit 18 appear to you to be a collection of materials related to the website from your files dated roughly mid-September of 1999?
A. Yes. Yes.
(Exhibit 19 marked.)
MR. LADD: Q. Ms. Merlo, does this composite

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Exhibit 19 appear to you to be materials from your files related to the website dated roughly September 20, 1999, with I guess some attachments earlier on in the month?
A. Yes.
(Exhibit 20 marked.)
MR. LADD: Q. Ms. Merlo, does collective Exhibit 20 appear to you to be materials from your files related to the website dated approximately the third week of September 1999?
A. Third and fourth week.
(Exhibit 21 marked.)
MR. LADD: Q. Ms. Merlo, I've got some more specific questions about this document. First of all, do you have Exhibit 20 there in front of you?
MR. COFER: 21 or 20?
MR. LADD: 21. I'm sorry. 21.
MR. COFER: That's why they bring me to these depositions.
THE WITNESS: Yes.
MR. LADD: Q. Is there an internal Philip Morris publication called Philip Morris Focus?
A. Yes. It is a Philip Morris corporate communication.
Q. All right. And to whom is -- well, is this in fact Issue No. 3, Volume 1 of that publication?

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A. Yes, it is.
Q. And is it complete? Are they or were they issued monthly?
A. They are planned to be issued monthly. Sometimes special issues come out if there's a reason.
Q. I notice this one is dated October 1999. Do you have an estimate of when it actually would have reached Philip Morris employees in this form?
A. My recollection is that it reached Philip Morris employees the week before we actually launched the website. So it would have been like the 6th or 7th of October, something like that.
Q. Okay. And what was the purpose of including information about the website in this publication?
A. To preview it for employees, so that they would be aware of the fact that we were launching a website. It might have been even earlier. It might have been around the 1st of October, because we did give employees advance notice that the website was being launched.
Q. Do you know whether there were any comments or suggestions from the people who first saw the website as

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result of this publication that brought about any modifications of the website?
A. No, there were not.
(Exhibit 22 marked.)

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MR. LADD: Q. Ms. Merlo, does Exhibit 22 appear to you to be materials from your files related to the website dated October 1 and October 3, 1999?
A. Yes.
(Exhibit 23 marked.)
MR. LADD: Q. Ms. Merlo, does Exhibit 23 appear to you to be material dated October 4, 1999 from your files related to the website?
A. Yes.
Q. Was the website pretty much in final form by this time?
A. Pretty much. I mean it was -- it was in the process of being uplinked, uploaded, having all the data programmed.
(Exhibit 24 marked.)
MR. LADD: Q. Ms. Merlo, does Exhibit 24 appear to you to be a memo with attachment dated October 5, 1999 from your files related to the website?
A. Yes.
Q. What's Philip Morris Management Corp.
A. Philip Morris Management Corp. is -- how do I explain this? Philip Morris Management Corp. I believe is what I referred to as Philip Morris Credit Corp. earlier, and I misspoke. And some of the corporate employees are paid through Management Corp.

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(Exhibit 25 marked.)
MR. LADD: Q. Ms. Merlo, does Exhibit 25 appear to be a collection of materials from your files related to the website dated early October 1999?
A. Yes.
MR. COFER: Are you done with this for a while?
MR. LADD: Most of it, but I think I'm going to be probably coming back to some of them.
Q. Ms. Merlo, we've gone through a number of exhibits, starting with 8 which was mostly undated, and then 9 through 25. And I take it that you recognize that those fall under roughly chronologic sequence?
A. Yes.
Q. Not necessarily within each packet, but at least one exhibit as compared to the next?
A. Right.
Q. Is it your belief that the majority of the significant documents related to the evolution of the website's content would be represented by these materials?
A. I think that's a fair assumption to make.
Q. And is it a fair assumption to make that most of at least the significant written materials that would reflect that chronological development would have reached you, and you would have retained them?
A. I would say overall, yes.

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Q. And that therefore, one could get a fair view of the process of developing the website by reviewing those documents in roughly that order?
A. Pretty much. I would say from what I see here that most of the kind of various editing changes and progression of some of the information that's on the website

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is in this packet.
Q. Did you notice any handwriting on the documents?
A. No.
Q. Do you have a standard practice with respect to whether to keep documents clean or to mark them up that tends to be your custom?
A. It depends. In cases where I was responding and if I mark them up I would have sent my notes back to whoever to incorporate them.
Q. So if there had been a document that you had wanted to make a comment upon and you had done so, it might no longer be in your files?
A. That's right.
Q. And not only your marked copy of the document wouldn't be in your files, but the underlying document also might not be in your files?
A. That's right.
Q. Okay. So that's a possible group of additional documents we might want to look for?

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A. Right.
Q. And presumably, we would want to look for those in the files of whoever sent you that document for your review?
A. That would be right.
Q. Okay. A number of the documents that I've seen in this group appear to be agendas or bullet points for meetings.
A. Correct.
Q. Would it be fair to assume with respect to those documents that appear to be that that such a meeting was in fact conducted at or about the date shown?
A. It was.
Q. And is it fair to assume that this was, at the time the website was being developed, a high priority project for the people involved in it?
A. Absolutely.
Q. So it was work on these -- this project wasn't getting bumped for other stuff?
A. No, it was not.
Q. Do you know of any occasion in which an author of any one of these documents was saying anything on the document that they weren't authorized to say?
A. Not to my knowledge, no.
Q. So when people were reflecting their opinion, that was the opinion on a topic that the group was interested in

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hearing from them about?
A. That's correct.
MR. LADD: Can I take just a moment and give you a break?
MR. COFER: You bet.
MR. LADD: I wanted to compare the privilege log against the documents.
(Brief recess in proceedings - 2:37 to 2:58 pm.)
MR. LADD: Q. Ms. Merlo, Exhibit 7 is the one that I represented to you I had kind of cut and paste text from out of your various web pages into a word processing document. The reason I've done that is I could then number the pages and I could have a pretty clear reference to what I was asking you about. So I'm going to refer to language on various pages of this substitute document.
If there's ever a point where you think that the actual web page itself would be helpful, I believe the web

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pages from which I took this text are all found in Exhibits 4, 5 or 6, so we could back up to that with a certain amount of effort, anyway.
A. All right.
Q. And certainly, anything that was on the page as a graphic, and sometimes text could be put on the page as a graphic, would not have been reproduced given the way I did it, because I just took the text from pages.

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A. I understand.
Q. With reference to the language which is on the bottom half -- let's take the top half of page number 1 at first, that group of topics that runs from Our Responsibility down through Litter are a series of website pages on the Philip Morris sites related to issues that you feel relate to your responsibilities as an entity, or Philip Morris' responsibilities as an entity? Is that fair?
A. That's fair.
Q. And that amongst the topics that is covered in the web pages that fall under the Our Responsibility heading is prevention of both access to cigarettes by youth and smoking by youth?
A. That's correct.
Q. For the purposes of determining Philip Morris' responsibility, does Philip Morris have an opinion as to what youth is?
A. Yes. Youth is or are people under the legal age to smoke. And that would be 18 in all states but three where the age is 19.
Q. Okay. And so the source of the age cutoff between someone who is youth to whom you don't want to sell and who is an adult to whom you do want to sell is determined by the laws of the particular state in question?
A. That's right.

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Q. And if a state were to decide to have an age of 15, for example, then Philip Morris would feel that that was a legitimate political decision for that state to make and that you could sell to those people?
A. You know, that is such a hypothetical question, as I think that 18 is pretty much the acceptable age on adulthood, draft into the army, so many other things, that we have never really discussed the lowering of the age, which seems a very unlikely thing. So --
Q. So you think that there might be -- in addition to the legal component of 18 and under, there's a certain component that follows from Philip Morris' own view of what constitutes someone too young to make a decision to smoke?
MR. COFER: Excuse me. Do you mean 17 and under?
MR. LADD: 17 and under. Right. Sorry.
THE WITNESS: Could you read that back?
MR. LADD: Q. Yes. Is it fair to say that in addition to wanting to comply with the law in the various states, there's a point at which Philip Morris just says as an entity that person is too young to smoke?
A. Yes. In fact, Philip Morris itself, in our own marketing activities, the things that we have direct control over which is not actually selling the product, because we don't sell directly to any consumer, a retailer does that, but our promotional programs, our choice of media, our

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database is limited to those adults 21 and over who have chosen to smoke. So we even build that extra cushion in in

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the activities that we undertake directly to limit our activities to those 21 years of age and older and who are smokers.

Q. Is the concern in part that an advertisement that was well-designed to reach someone who is 19 might well reach someone who was 17? Is that the thought underlying that three-year cushion?

A. Well, I think that advertising per se, I don't think we believe that advertising per se influences someone to make the decision to smoke. But I think it's fair to say that we do not regard ourselves as advocates for smoking, nor do we try to convince anyone no matter what their age is that they should smoke. What we do support is adult choice. And therefore, we try to ensure that our message is focused on only those adults who chose to smoke.

Q. Using the 21 as a target gives you greater assurance that you're succeeding in doing that?

A. We believe in our own efforts, the things that we control, the names on our database that we would communicate with directly, that that builds in that cushion to ensure that we're not reaching below the legal age.

Q. When you're evaluating advertisement in a particular medium, would you consider information about the

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demographics of the readership or viewers of that medium?

A. Well, reader -- it would be mainly readership at this point because we really are limited to print advertising. So absolutely, we look at the demographics. And in fact, if readership is more than 15 percent under the age of 21, we reject that publication for our advertising.

Q. And does that derive from figures about the purchasers of that medium? Or is that an effort to actually figure out who reads it as opposed to who purchases it?

A. It's readership numbers that come from the publisher and that have been audited by something like an ABC or a legitimate auditing entity.

Q. And was that decision to use 21 as a cutoff point one that was made at a particular time in the corporation?

A. Well, if you look at marketing guidelines and sampling guidelines, for many years our proactive activities have been limited to those who are 21 years of age or older. And we have complied with that spirit of the way we've conducted our business for many years. Promotional and sampling guidelines have been 21 years of age and older for a very long time, even though the legal age to purchase is lower.

Q. As you have reviewed historic documents either in the nature of your normal work or in connection with health concerns about smoking, have you seen documents that appear

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to track the demographics of smokers ages 18 to 24?

A. Who seem to --

Q. Ages 18 to 24? Excuse me.

A. Who seem to track, did you say?

Q. Yes.

A. Yes.

Q. And was there at some point a decision that kind of the cutoff of the tracking should no longer be 18 to 24, but 21 and up?

A. No, no. We still have information about the demographic of legal age and above smokers.

What I'm saying is that while those 18 years of age and older or in three states 19 years of age or older

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are of legal age to purchase, when we control a program, we use our database or we advertise in a magazine, we use the 21-year-old cutoff for eligibility to engage in one of our promotions, a Marlboro promotion. You must be 21 years of age or older and be a smoker in order to qualify to enter into one of our promotional programs.

Q. So when you say adult, do you mean 21 and over?

A. No. When we say adult, we mean legal age and above.

Q. Okay. 18 and older?

A. 18 years of age and older.

Q. Now, is it the case that Philip Morris from time

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to time will contract out or gather data where it decides to include 18 year olds, 19 year olds, and 20 year olds in the data sampling?

A. 18 and above, yes, our research, we have gathered data on those 18 and older.

Q. You have gathered that data yourself and you have contracted with other companies to gather it for you?

A. Yes.

Q. And even in contexts where you realize that you could choose a different data cutoff?

A. We gather data on a broad basis, but we also have data on numbers of smokers that are 18 to 21, 21 to 25, 25 to 35, 35 to 45, 45 to 55.

Q. In those cases where Philip Morris has the choice as to whether to use an 18-year cutoff for gathering data or 21-year cutoff for gathering data, why use the 18-year cutoff if you're not interested in marketing to 18 year olds?

A. Just, again, to see what the trends in the market are, et cetera. Those of legal age smokers.

The issue is not what data we collect. I think the issue is how do we design our programs and how do we implement our programs? And I think if you look at the implementation of our programs when we did sample which we no longer do and haven't since 1995, but when we did sample,

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limiting all of our sampling activities to those adults 21 years of age or older who were smokers; our collection of names for our database, you must be 21 years of age or over and a smoker in order to appear on our database; the magazine readership can't have more than 15 percent of its readership be below the age of 21 to qualify to be on our list of magazines that we would purchase in advertising.

Q. From time to time does Philip Morris use focus group data?

A. Yes. Yes.

Q. Okay. And Philip Morris on occasion may itself convene a focus group?

A. At our behest, yes.

Q. I mean is that done sometimes by Philip Morris employees as opposed to contractors?

A. Normally it's done by contractors.

Q. Okay. And you recognize that when you do a focus group with an outside contractor, you can tell the contractor what kinds of people you want in your focus group?

A. Right.

Q. Did you use any focus groups of children under the age of 18 to test out your anti-smoking ads?

A. Yes.

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Q. And you did that because you realized that that
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was the target audience?
A. Target audience was 10 to 14.
Q. And so you would use children 10 to 14, both smokers and non-smokers, in focus groups?
A. We really did not ask kids if they were smokers because, number one, they probably would not say that they were. But more importantly, we went for the target group of 10 to 14 and to see what the effectiveness of those ads were against the target group. Always with parental consent, I might add, and with parents on site during the focus groups, although not in the room.
Q. Okay. And I take it that you felt that that was the most appropriate focus group to use to gather valid end-user data?
A. Well, we were designing advertising to hopefully influence 10 to 14 year olds not to smoke, and therefore, we needed to be sure that the ads that we were developing in fact delivered the "Think, don't smoke," message to that audience.
Q. Did you ever track whether there had been any changes in smoking behavior amongst the focus group participants?
A. No. But we do -- the University of Michigan has for years done a study on the incidence of youth smoking in this country, and it seems to be by consensus a
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widely-accepted indicator of the trends in youth smoking. And we also have referred to that data as far as our youth smoking prevention efforts.
Q. Has that data been useful at evaluating whether your youth smoking programs are being effective?
A. I think it's too soon to say. I mean we launched our advertising and our program -- advertising is only one piece of what we're doing on youth smoking prevention.
We also are funding in-school curricula, community-based programs and, of course, the access prevention with the We Card program. But the investment of the 100 million dollars a year in advertising and those other four pieces that I talked about started just over a year ago.
So while the latest study from the University of Michigan has shown a slight downward inflection in the incidence of youth smoking, I think it would be premature for us to claim that our programs are the cause of that inflection.
Q. Downward inflection meaning it's still growing but it isn't growing as fast as it was?
A. No. It's actually gone down from previous years.
The trend line has changed to go -- to down as opposed to up.
Q. Okay. But only for that one year so far?
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A. Well, it's only -- yes. It had -- the incidence of youth smoking in fact had been declining until the early '90s, '92 and '93, and then we saw an upward inflection and the numbers started to -- this is the University of Michigan study. The numbers started to go up again.
Last year, '99, the latest study that was done, '98 to '99, that trend has an inflection that's down. I don't think you can say it's a trend yet until you see what happens over the next couple of years.

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Q. Do you know whether the researchers expressed an opinion as to whether that downward movement was statistically significant?
A. I don't know the answer to that.
Q. Did you test out your anti-smoking communications on 15, 16 or 17 year olds?
A. My understanding is that the ads were tested on 10 to 14 and there might have been some 15 year olds in the group. We did not test them on 17 and 18 year olds, because the ads really were designed to reach that group that hopefully had not started to smoke and to convince them not to smoke. And so we really limited our testing to 10 to 15 year olds.
Q. So there's been no testing to find out whether for 16 and 17 year olds those ads discourage or encourage smoking?

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A. What we really tested was whether or not they understood the message and the message was resonating with them. We did not test at Philip Morris incidence numbers.
Q. Did you test to find out what was the nature of the message communicated to the 16 or 17 year old?
A. No, I don't believe we did.
Q. Did you do anything to exclude the possibility that to the 16 or 17 year old the message was "Smoking isn't good for 10 to 14 year olds, but it's fine for me"?
A. No. Absolutely not. That is not made in the ads. It's just that the programming and the focus of the ads is on the 10 to 14 year olds.
Q. Actually, my question is did you do anything to exclude the possibility that 16 and 17 year olds were reacting to the ads in a way that presumably you didn't want them to react to?
A. No, we did not.
Q. And is that because that never occurred to anyone to do?
A. I would have to talk to the research people about exactly how they designed it to answer that. I really don't know the answer.
Q. Were the ads tested in any fashion for -- either focus groups or by surveys, on 19 -- 18, 19 or 20 year olds?
A. No, they would not -- well, they were tested

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against parents. I would assume that parents were older than that, so probably not.
Q. Did you do any efforts -- now, presumably you would prefer that 21 year olds who -- is it fair to say that it would be an unfortunate occurrence from your point of view if the ads discouraged 21 year olds from smoking or from smoking your products?
A. Absolutely not.
Q. Okay. You don't care one way or another whether it has any impact on them?
A. I believe that smoking should be an adult choice, as does Philip Morris, and that people should make that choice independently. As I said before, we do not advocate that people smoke. We advocate adult choice. And those adults who choose to smoke we hope will choose our product, but we would never discourage anyone from quitting if that's what they wanted to do, and we would never encourage anyone to smoke.
Q. Now, is it fair to say that you would not encourage people to quit, either?

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A. We -- on our website, as you know, since you've seen it, we certainly provide information about quitting and make it available. And we try to ensure that adults are in no way deterred from quitting if that is their choice. But we do believe in adult choice.

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Q. You want to not deter quitting?
A. You want to -- it's a double negative.
MR. COFER: Read that back, would you, please?
(Question read as follows:
Q. You want to not deter quitting?)
MR. COFER: You want to not deter quitting?
THE WITNESS: That's kind of double negative. But we do not take a position except that an adult should make a choice, and if their choice is to quit, we would encourage that adult to quit.
MR. LADD: Q. Other than the website, is there anything else specific that Philip Morris has done in order to facilitate the decisions of adults to quit?
A. Well, there are warnings on our pack that talk to the issue about quitting. And --
Q. That's it?
A. That's been going on for years.
Q. Okay. Anything else that you can think of?
A. Not -- not specifically, no.
Q. And do you feel confident that there was no testing of the ads targeted to the 10 to 14 year olds with respect to finding the impact of those ads on children -- excuse me, young adults over the age of 18?
A. Well, as I said, the ads were tested among the children as well as their parents to see whether or not the

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message about thinking and not smoking was coming through clearly and whether the parents thought that the ads would resonate with their kids. So that testing was definitely conducted.
Q. Was there any testing as to whether the ads were resonating with the adults?
A. Well, resonating from the standpoint whether they thought the ads were having a positive impact on youth not smoking, yes.
Q. Were there any questions asked whether they had any effects on adults' desirability for quitting smoking?
A. No, they did not.
Q. Looking at this document where I started, the paragraph that starts "We are more than 13,000 people."
A. Yes.
Q. The 13,000 people is what entity?
A. Philip Morris Incorporated, Philip Morris U.S.A. The domestic tobacco company.
Q. Not including Philip Morris Companies, Inc.?
A. That's correct.
Q. So the "we" in this paragraph is Philip Morris U.S.A.?
A. That's correct.
Q. And where you use in that paragraph the term "adults" on at least two occasions in there, you're

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referring to 21 and over or 18 and over?
A. Well, we're talking about 18 years and above, or legal smoking age.
Q. In the fourth paragraph down, the term "stakeholders" is used. Can you tell me what that means?

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A. One, two, three --
Q. "This means we conduct ourselves" --
A. Um-hmm.
Q. "This means we conduct ourselves." That paragraph.
A. Stakeholders would be any number of people. They would be employees. They would be consumers. They would be customers. They would be suppliers. They would be shareholders. People who are in some way involved with us in our business, in our products.
Q. Is it fair to say that stakeholders are people who are potentially influenced by your decisions and actions?
A. To some extent, yes, because many of them are business associates, employees, consumers. Yes, I would say so.
Q. Would the child of an adult with -- who smoked and had lung cancer be a stakeholder?
A. I don't know how to answer that. That -- you would have to be more specific.
Q. Well, specific I can be. I don't know that --

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well, I'll try.
I'm referring to a child under the age of 18 whose parent both smokes and has lung cancer. Smokes your products and has lung cancer. Would the child be a stakeholder, in your opinion, in Philip Morris?
A. I'm not sure that it would be or not.
Q. I guess the question is why not, if some of those other categories of people clearly are?
A. Perhaps it could be. I mean I never thought of it quite that way, but could be.
Q. Because I take that the stakeholders are not just people to whom you have legal duties.
A. Well, they are people that are pretty well directly associated in some way with our business. As I said, they're employees, they're shareholders, they're customers, they're consumers.
Q. Do you think they include people --
A. They're suppliers.
Q. I was going to ask you that. Do you think that includes people in the communities where plants are located?
A. Just the general public?
Q. Um-hmm.
A. I would say not just the general public. But I do think that there are people within the communities where our plants are located that are stakeholders. Certainly the

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workers in our factories are stakeholders.
Q. How about people who are within the area of potential air pollution from one of your plants?
A. Well, I don't know that we have air pollution from our plants, but I think this -- this really is meant to talk to those people that are in some way directly connected to our company through some sort of a direct relationship.
Q. Now, when you say you want to conduct yourself within the spirit and the letter of the law, how do you go about determining the spirit of the law?
A. Well, I think you interpret. Spirit really does come down to interpretation. There is a letter, but there's a spirit in which rules, regulations, guidelines, agreements, et cetera, are negotiated. And I think we try to interpret based on good judgment and our commitment to be responsible what we believe the spirit of the agreements,

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the laws that govern us are, and try to make decisions that are consistent with that spirit in the way we conduct our business.

Q. Would it be fair to say that Philip Morris would view it inappropriate to engage in conduct which was as close as possible to the line of illegality?

A. That would be inappropriate as far as we're concerned.

Q. And always has been inappropriate for as long as

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you've known about the company?

A. In the 30 years I've been with Philip Morris, when we talked about issues we have never talked about trying to push over the line but to stay firmly on this side of the line. So I think that would be a fair interpretation.

Q. Firmly on the legal side of the legal divide, as opposed to the illegal side?

A. Absolutely.

Q. And with a comfortable margin --

A. A margin.

Q. -- between --

A. Yes.

Q. -- the literal meaning of the law and what you're doing?

A. We try to be conservative in the way we've interpreted the law or regulation or guideline.

Q. Do you have a sense of what was the intended message of the words "We have the courage to do what's right"?

A. Yes. I think what it means is that we are not self-serving in making necessarily expedient decisions, but doing what we think is the right thing to do for the right reasons.

Q. Is there any sense that Philip Morris has that some of the things that it does that it thinks are right

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have become unpopular recently?

A. Could you be more specific?

Q. Sure. I guess I'm wondering if I'm unfairly interpreting this phraseology by saying that to me it communicates an idea "We're willing to do what we think is right even if everybody else thinks we're wrong."

A. I would think you're misinterpreting that.

Q. Okay.

A. One of Philip Morris' goals is to better align itself with society's expectations of a responsible company, which is part of our mission to be responsible. And with responsibility also comes social alignment.

So in fact Philip Morris is seeking to make decisions that are consistent with that expectation of a responsible company.

Q. Do you know of any research that you've done that suggests that there is a popular distrust of the more recent activities of tobacco companies, including Philip Morris?

A. Yes.

Q. And is it fair to say that you think that that's an unfair characterization of the company?

A. I think from the inside, knowing this company, it's an unfair characterization of what I know us to be. I don't think it's unfair when -- if I were sitting on the outside and having read or heard all the things that have

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been purported to be about our company.

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So I can understand the skepticism among the public about us and others in the industry, but when I sit inside and I know the way we have conducted ourselves, I feel that it is somewhat a mischaracterization and unfair.

Q. Is it fair to say that your belief is that many members of the public are exposed to deliberately-slanted information about Philip Morris that portrays it in an inaccurate and unattractive light?

A. I don't know that I would use the word "deliberate" because I'm not going to ascribe motives to anybody. But I do believe that there has been a lot of misinformation about our motives and the way we conduct our business, yes.

Q. Now, I notice also just immediately in front of that sentence that I've just read, that courage sentence, I'm going to read a phrase that says "fully disclosing all appropriate information, and not just that which supports our point of view." Again, page 1 of Merlo Exhibit 7.

Is it fair to say that one of the things that's done on the website is to disclose information that you realize does not support your position?

A. I wouldn't say that. I mean I think that the website discloses a broad range of information from a variety of sources, some of it which we support, some of it

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which we may not draw the same conclusions. There are judgment issues here, and we may not draw the same conclusions as others from the literature that's out there. But we believe that an adult has the right to see the full range of literature and information on a topic and then make the judgment call for themselves. And that's basically what we're trying to say, that we should not edit or not make that information available just because we might draw a different conclusion or not draw a different conclusion. We should just make the broad information available.

Q. Does Philip Morris believe its products are dangerous?

A. I think that would be a fair thing to say, that we believe that cigarettes are dangerous, that there are health risks associated with smoking cigarettes.

Q. But is it fair to also say that you think that adults who wish to incur that hazard should be free to do so?

A. Yes, I think that's fair.

Q. Does Philip Morris have an opinion on how dangerous its cigarettes are?

A. Well, I think that as we express on our website, there is an overwhelming amount of medical and scientific data that indicates that smoking does cause some disease, lung cancer, heart disease, emphysema, other diseases, and

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that those who choose to smoke are more likely, much more likely to contract one of those diseases than those that don't. And it is one of the single largest risks for getting some of these diseases based on the statistical evidence. So we acknowledge that on our website.

Q. Does Philip Morris have an opinion as to what proportion of its consumers contract a tobacco-related disease?

A. I'm not aware of a specific number. I mean there are -- there are statistics out there, but --

Q. I mean does Philip Morris have an opinion as to whether it was five percent versus 25 percent, for example?

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A. I'm not aware of that position.
Q. And why? Is that something that Philip Morris isn't interested in?
A. Well, I think we would be very interested in it. I don't believe that anyone, including those who publish statistics, have identified the mechanism or the constituents, in fact, that cause the disease. And therefore, it would be hard to say what percentage is actually from smoking or not. But I think it is fair to say that there is overwhelming medical and statistical and scientific evidence that there is a correlation between smoking and those diseases.
Q. And you thought it important on the website to

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communicate that that consensus suggested that tobacco was not a small risk, was a quite substantial risk?
A. And I think we do communicate that.
Q. And I guess the question is what is Philip Morris' belief as to how substantial that risk is?
A. I don't think -- we have not quantified that. It is substantial, and I think each person has to understand the -- should understand the information that's available, should absorb it and make the decision that they think is right for them and weigh the risks against what they might perceive to be the benefits and make a decision.
Q. Do you recognize that risk determination is a largely statistical issue?
A. Well, right now I think that that's what the scientific and medical evidence is. It is -- it is statistical.
Q. And Philip Morris has done and does do in-house some very sophisticated statistical work, does it not?
A. We do in-house market research, if that's what you're asking me.
Q. Right. And it is quite sophisticated in terms of its understanding in application of statistics?
MR. COFER: Do you understand the question?
THE WITNESS: I do. I'm not sure I -- I think I understand it.

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MR. COFER: Could you rephrase it, please?
MR. LADD: Q. You realize that amongst the expertise that's available to Philip Morris management are people who are statisticians by training?
MR. COFER: Are you talking about in-house at Philip Morris?
MR. LADD: Yes. In-house at Philip Morris.
THE WITNESS: I don't believe we employ a lot of statisticians at Philip Morris.
MR. LADD: Q. Okay. I guess the question is not a lot of. You do employ people with statistical expertise?
A. I believe we have people that work at Philip Morris that have statistical expertise, yes.
Q. And you also hire consultants on statistical issues?
A. Yeah, that would be accurate.
Q. And you use a lot of statistical information when you're making marketing decisions?
A. We use statistical information when we make decisions on marketing and other issues, yes.
Q. Have those resources ever been used to allow Philip Morris to make the statistical determination of how risky its products are?

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MR. COFER: Objection. Asked and answered.
You may answer it.

THE WITNESS: Again, I am not aware of our ability to be able to statistically indicate beyond the fact that it is a substantial risk, and that is something that we have communicated to our consumers and that we have acknowledged. Without knowing the constituents and the mechanisms that actually cause the disease, I think it's difficult to go beyond that statement.

MR. LADD: Q. So it's your opinion that somehow you need to know about the mechanism of a disease before you can define the risk?

A. To define it the way you're asking me to define it beyond it being a substantial risk, yes.

Q. In order to come up with a correct number, you need to know the mechanism by which something happens?

A. Well, I think that would be something that we -- yes, that would be helpful.

Q. Have you ever asked the statistician whether the statistician thinks that that's true?

A. Have I? No.

Q. Do you know of anyone at Philip Morris who has?

A. I can't speak. I don't know the answer to that.

Q. You don't know whether anyone has? You don't know that anyone has, or you just don't know the answer?

A. That's right. I'm not aware of it.

Q. You're aware of the fact that there are lots of sources of information out there flowing to people about the hazard levels associated with smoking?

A. Yes.

Q. And it's been a fairly extensively covered topic in scientific literature?

A. Scientific literature, in the media.

Q. And you realize that your consumers, potential consumers and others are hearing from other people estimates of the percentage of smokers who will contract tobacco-related diseases, are you not?

A. Yes.

Q. And that those numbers can easily run 1 out of every 4, 1 out of every 3, 1 out of every 2?

A. I have heard any number of projections, and any number within the same given day from various sources.

Q. Including numbers with at least that range of difference, 1 out of every 4 to 1 out of every 2?

A. At least.

Q. Has Philip Morris ever made any effort to find out whether the number does indeed fall within that range or is more or is less?

A. I -- I really don't know the answer to that question.

Q. In the next sentence there under Governmental Issues, I take it what we're dealing with here is first, second and third, et cetera, these are the core values that are part of the -- or are related to the mission statement?

A. That's exactly what it says. We rely on a set of core values to guide us, and those are the values.

Q. And under the second heading, you say that one of the aspects of the second core value is your encouragement of constructive dissatisfaction with results?

A. That's right.

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Q. In the course of either looking at publications or testifying in this litigation, have you come across documents that strike you as suggesting that at least the individual who wrote that document was engaged in an illegitimate practice?

MR. COFER: I'm going to object to that as vague and ask if you have specific examples in mind. I think that's awfully broad and a vague question.

MR. LADD: It's meant to be broad.

MR. COFER: You may answer.

MR. LADD: Q. Have you ever read anything in the connection that it was authored by a Philip Morris person in the course of this litigation where you either saw in the person or in the newspaper where you said "Ah, that really wasn't a very moral thing for that person to write"?

A. I have seen things that I think have shown poor judgment. I don't know that I, without being specific,

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would talk about morality or illegitimacy, but bad judgment.

Q. So one of the things you can be constructively dissatisfied about is some of the historic documents suggest to you poor judgment on behalf of the author?

A. Yes.

Q. Including poor judgment about the use of information with respect to children?

A. Well, again, I -- in the 30 years that I've been with Philip Morris and as far as my knowledge of the company, information was not used to market to kids. On the contrary. I think as we discussed before, Philip Morris has always tried to be very conservative in its interpretation and its execution of the programs that it's been involved with.

Q. If we go past or beyond your individual working experiences as one person in the company and look at some of the documents that have been -- have received some focus either in the litigation, received some attention either in the litigation or in the press, are some of those documents where your constructive dissatisfaction with the judgment of the person who wrote the documents is related to children?

MR. COFER: Again, I'm going to object to the form of this question as vague. We're talking about generalized documents, rather generalized topics, and I think it's difficult for the witness to address in that context. If

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you have specific documents in mind, I think it would be helpful to at least show those to the witness. But I won't instruct her on it.

MR. LADD: I doubt if I'm going to have time to do that today, but --

MR. COFER: You may answer if you understand the question. Would you like to have it read back?

A. Yes. Could you read it back, please?

(Question read as follows:

Q. If we go past or beyond your individual working experiences as one person in the company and look at some of the documents that have been -- have received some focus either in the litigation, received some attention either in the litigation or in the press, are some of those documents where your constructive dissatisfaction with the judgment of the person who wrote the documents is related to children?)

THE WITNESS: I'm not -- I'm not sure how to

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answer your question.
My -- I don't believe, not just my personal experience but my knowledge of the company and my colleagues and the people who were running the company and running the programs, I feel confident that we never used those documents to formulate marketing plans.

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MR. LADD: Q. Okay. Is part of the process of constructive dissatisfaction kind of the ability to identify bad apples in the batch?

A. I think part of constructive dissatisfaction is really, phrased another way, continuous improvement; always looking at what you're doing and seeing if you can't do it better. And I think that that's something that we have tried to do at Philip Morris for as long as I can remember, is to -- to always try to learn lessons from what we do, incorporate those lessons and do it better the next time.

Q. You've seen references in Philip Morris documents, I assume, that refer to groups of children under the age of 18?

MR. COFER: Objection. Vague. In what context?

MR. LADD: Q. Is that true? I'll stick with the question.

A. I have.

Q. And those can be, for example, 12 to 17 year olds?

A. I have seen such a document.

Q. And are there anything in those documents which cause you to have a feeling of constructive dissatisfaction?

A. Again, I need to preface what I say with the acknowledgment that from my knowledge of the company, of my colleagues and those that were involved in the business at that time, none of those documents were used to formulate

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marketing programs. They were documents that were written by statisticians that may have been of interest in predicting the future size of the market, purchasing -- future purchasing needs, planning of production, et cetera. You know, do I wish that we didn't have those documents? Certainly. But again, I feel confident that those documents and that information were never used to develop, implement or plan marketing activities.

Q. Are there documents that you've seen that if you had been a recipient of that document and the person who wrote the document had worked for you, that you would have gone and talked to that person and say, "Listen, we just don't do this kind of thing"?

MR. COFER: Objection. Vague.

THE WITNESS: If you're asking if I've ever spoken to someone about a document --

MR. LADD: Q. No. No. I'm not asking that. The question is within the documents that have struck you that "If that had been my subordinate and he sent that memo to me, he would have heard from me," that that was your emotional reaction or that was your reaction of constructive dissatisfaction?

A. It's difficult to know what one would do in hindsight. I have spoken to people that work for me over the years about things that I found to be inappropriate, but

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I can't go back in history and in hindsight know what I may or may not have thought about something that I may not -- may or may not have seen at the time.

Q. All right. But you would recognize it as healthy

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for a company to be able to admit any mistakes in that area if it had made mistakes?
A. I believe that admitting mistakes if they've been made are -- is a healthy thing.
Q. And that, conversely, either covering them up or making excuses for them runs a risk of violating this policy of the company?
A. I would agree with that.
Q. Do you consider Myron Johnston a statistician?
A. I would say primarily that Myron Johnston was a statistician, yes.
Q. Did you ever work yourself with him?
A. No, I never did.
Q. Were there meetings that you attended that he was at?
A. I don't believe so. I -- I vaguely remember him, but I don't know that I was ever in any meeting with him.
Q. Do you recall that he authored some number of documents, more than one, that considered not only the number of underaged smokers but analyzed the demographics of underaged smokers; how many female, how many male, how many

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black, how many northwest, how many west, how many marijuana smokers, how many cocaine users, et cetera?
A. I don't remember all that detail, but conceptually, yes.
Q. And do you recognize when you saw that material that that level of detail went beyond the production -- the estimation of future production needs?
A. I would like to see specifically which documents you're talking about, I think, to answer your questions.
Q. Would it be fair to say that in order to determine whether you need to build a new plant or not you don't need to know whether your cigarettes are being purchased by a black woman or a white man? You just need to know how many they're selling?
A. Well, I think there are trends in the market that help predict future growth, et cetera. So again, without seeing the specific document I would not want to characterize it.
MR. COFER: Do you want to take a break or are you okay?
THE WITNESS: I'm fine.
MR. LADD: Q. On page 3, the second paragraph, "Because we make."
A. Yes.
Q. In that sentence, "Because we make a product that

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public health authorities have concluded causes serious diseases in smokers," was there ever any consideration given to striking out the words that start with "public" and ends with "concluded" so that the sentence reads: "Because we make a product that causes serious diseases in smokers"?
A. Not to my knowledge.
Q. Would that sentence still be accurate if it read "Because we make a product that causes serious diseases in smokers, we believe that the decision to smoke should only be made by informed adults - not children"?
A. Again, I guess that I would say that because -- because the mechanism and the constituents have not been identified, I think an absolute statement like that might not be accurate. I don't know. But I do think that this is an accurate statement as it is positioned in this work.

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Q. Isn't it -- maybe I could go back and clarify something from before. Isn't it true that Philip Morris has concluded that its products cause serious diseases in smokers?
A. Philip Morris has concluded that there is an overwhelming amount of medical and scientific evidence to that extent and that, as a result, it is far more likely that those who choose to smoke are more likely to contract a disease than those who don't choose to smoke based on that scientific and medical evidence, that that is the conclusion
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that Philip Morris has come to.
Q. So it has concluded that there is overwhelming evidence that that fact is true, but it hasn't concluded that the fact is true?
A. No. Philip Morris has concluded that there is and agrees that there is overwhelming medical and scientific evidence that smoking does cause those diseases and those who choose to smoke are more likely to contract the diseases than those who don't choose to smoke. What Philip Morris, nor to my knowledge none of the other public health community or scientific community experts have not concluded what the mechanisms or the constituents are that might cause that disease. But there is a correlation between smoking and disease.
Q. Does Philip Morris think that a smoker in deciding whether or not to quit should be influenced by the fact that the mechanisms of disease creation are unknown?
A. I think a smoker -- I think an adult who is making the decision whether or not to smoke should be influenced by the fact that there is overwhelming medical and scientific statistics and information that says that that decision will appreciably increase that person's risk of contracting a disease, and they should know that there is a risk and a substantial risk associated with the decision that they're going to make.
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Q. And --
A. One way or the other.
Q. And in making that decision, the fact that the mechanism of the disease is unknown is irrelevant, isn't it?
A. Well, I don't know that it's irrelevant. But the fact is that we don't know what the mechanism is, we don't know what the constituents are, and it's very clear that while there is a substantially increased risk, not everyone who smokes contracts a disease and not everyone that not smokes -- that doesn't smoke doesn't not contract the disease.
So there is an adult decision to be made because there is risk involved in making this decision.
Q. And if one of those adults were to ask you, you being Philip Morris in this instance, "Does it make any difference to my decision whether the mechanism is known or unknown?" What's the answer to that?
A. The answer to that is: "You should read the literature from a variety of sources and you should evaluate whether or not in your case it's a risk that you feel you want to take or you don't want to take. There's a lot of information out there, and you should be aware of it, you should read the warnings, you should educate yourself and then you should decide whether the risk makes sense to you."
Q. If the court were to order you to answer yes or no
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to the question "Do your cigarettes cause serious disease" what would you answer?

^ MR. COFER: Wait. That is an improper question. She doesn't have to answer a question yes or no. She has to answer a question with the words she feels comfortable answering it. And that's not an appropriate question, and I'll instruct her not to answer that.

MR. LADD: I've seen many judges who order witnesses after they've been given the opportunity to give long speeches with respect to the same question politely and consistently ask to give that instruction.

MR. COFER: I think the witness --

MR. LADD: Maybe that doesn't happen in other jurisdictions, but that happens out here.

MR. COFER: I think the witness has answered the question to the best of her ability several times.

MR. LADD: All right.

Q. Getting away from asking you about Philip Morris' position and just asking you about your personal belief, do you personally believe that Philip Morris' products cause disease?

A. I personally believe that cigarettes -- not necessarily our products, cigarettes -- that there is overwhelming evidence that there is a correlation between many diseases and smoking. And I think that someone who is

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contemplating a decision to smoke has to be aware of the risks involved in making that decision.

Q. Have you ever been involved in giving anyone else the advice as to whether they should start or not start, quit or not quit?

A. Well, I would never give anybody advice as to whether they should start or not start. I would -- unless they were a child, and then I would certainly advise them not to smoke because we don't want -- I don't and the company does not want kids to smoke. But if it were an adult who asked me what I thought, I would say to them that this is a risky product and that they should read the literature, as I've answered you before, and then they'd have to make the decision for themselves.

But, you know, I would give the same advice to an adult that asks me whether or not they should do other risky things in their life. I really think that each person has to make the decision that's right for them. I don't think I can make a decision for anyone else.

Q. Did both of your parents smoke?

A. My father smoked, and my mother smoked I believe for a while. She didn't -- did not smoke while I was growing up, but she had smoked, it is my understanding.

Q. Is your father still alive?

A. No, my father would be 100 years old.

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Q. Did you ever talk to him about smoking?

A. Did I talk to him about it? I don't believe I did.

Q. You never talked to him about the risks of his smoking?

A. I don't remember having such a conversation with him, no.

Q. The reason I asked the question is you said that you would never talk to an adult about their decision or recommend to them --

A. I would not tell them. It's not that I wouldn't

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talk to them. I would not tell them whether they should or shouldn't. I don't believe it's my place to tell some -- an adult what they should or shouldn't do with their life. I think that as an adult we're each empowered to make decisions that are right for us in our lives, and I think it's presumptuous for me to tell somebody else what lifestyle choices they should make or that they should tell me what lifestyle choices I should make.

Q. Would it be presumptuous for you to say to your dad or me to say to my father, you know, "Dad, I'm really counting on you taking care of mother, I want you to be around and I'd certainly feel a lot more comfortable if you stop smoking"? Is that inappropriate?

A. Oh, I don't know that that would be inappropriate

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with a family member, but I don't remember ever having that conversation with my dad.

Q. Do you wish you had?

MR. COFER: You know, John, this witness is being produced as a 30(b)6 witness on the website and youth smoking prevention. I understand there's a nexus between her personal beliefs and perhaps her credibility as a witness, but I do think we are getting far afield with respect to personal issues.

MR. LADD: Yes. I'm pretty much at the end of this conversation, but I would like her to answer that question.

MR. COFER: What was the question? Would you read it back?

MR. LADD: Q. Do you feel bad that you didn't?

A. No.

Q. What did your dad die of?

A. My dad died of cancer.

Q. What kind of cancer?

A. Brain.

Q. Did he have lung cancer first?

A. I don't think so. I think it was brain.

Q. A brain primary?

A. Yes.

Q. That's too bad. Have you ever had other close --

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do you have any other loved ones who smoke?

A. Well, I've loved a lot of my friends, so I guess you would have to say yes, I --

MR. COFER: Did you mean family?

MR. LADD: I guess I mean family.

THE WITNESS: You mean family? I'm trying to think. I don't have a very large family, so offhand I'm not -- I'm trying to think if any of my cousins smoke. And I'm not -- I don't think so, but I'm not aware.

MR. LADD: Q. Have you ever been married to a smoker?

A. No. I've never been married.

Q. I take it that Philip Morris agrees that it would be inappropriate for it to encourage children to smoke?

A. It would be inappropriate -- I think it would be inappropriate and I think the company feels it would be inappropriate to encourage anyone to smoke, but it would certainly be most inappropriate to encourage children to smoke.

Q. Okay. And you believe that the company has made a conscious decision to avoid both of those, encouraging children to smoke and encouraging adults to smoke?

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A. That's correct.
Q. Do you know of any exception to that policy?
A. To encouraging --

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Q. Right.
A. -- people to smoke? I do not know of any exception to that policy.
Q. Do you think that it should be -- that children should be given the same message that your parents gave you, that they shouldn't smoke before they're 18, but then it's up to them whether they want to smoke or not?
A. I think that's a pretty good way to bring up kids, to say "Look, there are certain things that as a child and as a parent I'm going to tell you I don't want you to do. I would hope that even as an adult you don't do them, but once you're an adult, I've shared with you as much as I can and you have to go out and make your own decisions in life, and with those decisions will come some risks."
Q. Did your parents communicate to you that they would prefer you had not smoked when you turned 18?
A. Yes.
Q. And I take it you thought that was appropriate for them to express?
A. Oh, yes. Absolutely.
Q. Do you think it's an appropriate message for Philip Morris as a company to give to children, that they shouldn't smoke as children but then it's going to be up to them as adults?
A. I don't think we're giving them that message.

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What we're sharing with kids is that they shouldn't smoke. We are, as I said before, believers in adult choice, and so when someone becomes an adult, really the decisions that they make in life are their decisions to make.
Q. Do you think there's any danger that to a child you are communicating the idea that it's okay to smoke when they turn 18?
A. I don't think we're communicating that at all. I think we're hopefully communicating that this is a risky product and that there is medical and scientific evidence that would indicate that it's a risky product, and that they should carefully evaluate whether that's a risk that is right for them.
Q. Has Philip Morris ever considered taking the position of communicating to someone other than a child that you as a company would recommend not smoking?
A. To my knowledge, we have not taken the position that we recommend that you not smoke, but we certainly don't recommend that you do smoke.
Q. Okay. Now --
A. Again, the --
Q. -- the question is have you ever considered. To your knowledge, has Philip Morris ever considered the idea of recommending to adults that they not smoke?
A. I'm not aware of that.

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Q. To your knowledge, has Philip Morris ever given consideration to discontinuing sales of cigarettes in the United States?
A. Not to my knowledge, no. Not as long as it's a legal product.
MR. COFER: Can we take about five?
MR. LADD: Sure.

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(Brief recess in proceedings - 4:08 to 4:21 pm.)
MR. LADD: I suggest that we temporarily move over to Exhibit 8, because I have some questions about that, and then I'll return to the website. I would just like to record on the record here an observation about these numbers which I hope may be helpful some day to someone trying to figure out the numbering system. In preparing the exhibits, I took the documents out of their numerical order in order to put them into rough chronological order. The numerical order appears to be a file folder with number on the file folder cover of 204437790, and then there's a gap until you get to 7816. And I don't know what filled that gap, and I don't see anything in the privilege log that explains the gap.
And then there is a series of documents that go from same first six digits, then 7816 to 8157 with gaps within the range, and many of the gaps within the range seem to be explained by the privilege log. I don't know that

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every gap in the range is explained by the privilege log. So in case that's helpful either to you guys or me when I'm reading it, that's what appears to be the case.
MR. COFER: Okay.
MR. LADD: Q. Ms. Merlo, I think the easiest thing on this Exhibit 8 is to refer to the last four digits of Bates stamp as we're going through them, but I will still go through them in order.
A. All right.
Q. Do you see there page 204443 followed by the four digits 8347, the very first page?
A. Yes.
Q. Okay. Are you familiar with what that sets forth?
A. Yes. This is the progression of how the approval process would move through on information going on the website, changes to the website, et cetera. This, however, is for the corporate website and not PMUSA website.
Q. And was this the website after it had already been approved by the task force? Or does this include the task force approval stage?
A. At the very top you can see that the task force would --
Q. Okay.
A. -- review the information.
Q. And so given the fact that that top box talks

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about finalizing something, I gather that there had been a fair amount of process that happened off the page, as it were, logically prior to the top box?
A. Exactly.
Q. So this kind of tells us how the process went from the finalization of the site to actual implementation of the site?
A. Or, you know, adding something to the site. If we were going to do something new or add something new, it would go through all of these steps, as well, to just check to make sure that there's some consistency in the way we handle adding things to the website.
Q. I'm sorry, but did you already tell me who Jill Flory was?
A. Jill Flory -- I did not -- is in our security, corporate security department. I don't actually know Jill personally, so I can't --
Q. Security in the sense of firewall security for a

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computer system or --
A. I am thinking that. You know, I'm not sure. I think it must be firewall security. I don't know Jill. As I say, this is for the corporate site, so I really don't work with her.
Q. And do you know whether she was involved in the Philip Morris U.S.A. site at all in a similar capacity as is

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set out here?
A. She is not involved in U.S.A.
Q. She's not? Is there somebody else doing that?
A. It would be somebody in our IS department. I would have to check with Sean to know exactly who it is.
Q. And did you already tell me who Steve Englund was?
A. I don't know who Steve Englund is.
Q. Mark Berlind we've talked about.
A. Yes.
Q. Who is Sam Nickols and what was his role?
A. He is in our human resources department, and he came to some of the meetings to represent any HR issues as they might apply to the site. And there has been discussion about adding a module for recruitment and HR issues to the website.
Q. Is there any personal information on the website about the people who fill particular jobs at Philip Morris?
A. Not at this point, no.
Q. Not at this time? "This is our CEO" or --
A. No. In fact, we don't use the names of any employees on the website.
Q. And then Andre Russotti is the information services at the corporate level?
A. That's right. That's right.
Q. Now, this review and approval by security

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committee, is there some common factor between those seven names -- nine names?
A. Actually, they're from different areas. They're from actual physical security, and there are HR people here, there are IS people here. And I don't know quite frankly all the names.
Q. All right. Now, the next page physically in this collection, the last three digits are 8346.
A. Right.
Q. And you pointed out there is a date on this one.
A. Correct.
Q. Of August 11, 1999, which I guess was kind of in the mid point of when you were working on this process?
A. That would be about right, yes.
Q. And this, I take it, is an organizational chart for the Philip Morris Companies?
A. No. No. This is a site map.
Q. Oh, I see.
A. For the Philip Morris Companies website.
Q. And was this same structure preserved through the end of the process?
A. Pretty much so. This was kind of one of the early maps. I mean there might have been a few minor shifting topics from one area to the next, but pretty much this is the site map that we wound up with.

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Q. I note that under Tobacco Issues that tobacco issues are numbered 1 to 10, and there are less than 10 different issues under that heading in the eventual site.

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Were there topics that were considered but rejected?
A. No. This was really meant to be more of a place holder and --
Q. Schematic?
A. The schematic. It was not done -- we had not drafted at this point, so this was a map that was done by I believe Brand Dialogue not really having any specifics of what was going to go under each area.
Q. And I note that this is captioned Phase 1 October Launch. And October refers to the date you actually did get the website running.
A. That's right.
Q. What's the difference between Phase 1 and whatever were any other phases?
A. Well, I think this was just meant to be Phase 1. This was a site map that was submitted by Brand Dialogue for us to consider as a way of navigating and organizing the information, so it could have really been called draft 1 or -- in other words, it was -- it was their first shot at our discussions of taking all the things we talked about wanting on the site and kind of laying it out in a schematic for us to consider.

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Q. Okay. So there wasn't a phase 2 in the sense that it was intended at the time of the October launch to have a follow-on --
A. No, no.
Q. -- similar project?
A. It's really just they -- they just labeled it that way.
Q. The next physical page, the last four Bates numbers are 7989. Do you see that?
A. Yes.
Q. And this is, I take it, another site map, essentially?
A. This is the Philip Morris U.S.A. site map.
Q. Oh, I see. Okay. From a date about a month later.
A. Right.
Q. And I gather by this time that the specific tobacco issues had been identified at least tentatively rather than 1, 2, 3, 4? I notice Addiction, Disease, Secondhand Smoke, et cetera.
A. We started by this point, by September we had pretty well decided on content. Although I think even from this, after we did some research there might have been some reorganization of where the information was actually going to appear. But this -- this really started to reflect what

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our site map was going to look like.
Q. I note under the first topic, under Tobacco Overview, is Addiction. Is there a specific page that kind of gathers the addiction information on the website as it was eventually used? Or was the addiction information spread out on other pages?
A. No. There's an area that specifically addresses our position on addiction and then provides links to other sites on addiction.
Q. Then we have a page with the last four digits 7974. Do you see that?
A. Um-hmm. Yes, I do.
Q. And again, the same thing but PM -- Philip Morris U.S.A. page?

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A. Yes.
Q. Can you put this in sequence relative to 8346? Let me ask it differently. Is it fair to assume that since we now have specific issues under Tobacco Issues rather than 1, 2, 3, 4, that 7974 is presumably later in time than 8346?
A. Yes, because it also includes that we would start with the Overview of the Mission and Values, so I believe this was a later -- or a refined map.
Q. And probably refined relative to the immediate preceding page, the one on September 7?
A. Yes.

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Q. And part of that change was to move the overview, mission and values right up to the start, above all the topics?
A. Yes.
Q. And was that design maintained?
A. Well, the kind of the overview was. Because if you read the preamble, that was what we meant by the overview. The reason that we were -- the reason for our website which incorporated kind of language from our mission and values.
Q. And that box that says Corp. Respons., that's corporate responsibility?
A. Yes. .
Q. And Accomm is accommodation?
A. That's correct.
Q. Meaning conflict between smokers and non-smokers, essentially?
A. Well, it means, yes, public place smoking policy, ways of accommodating both programs, et cetera.
Q. Under this heading Make Your Voice Heard there's a box for Mobilization Briefs. Do you have any understanding at about the time of this site map what a mobilization brief would be?
A. That was really governmental issues, and it was what turned out to be the software that we discussed earlier

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about how you could make your voice heard, how could you directly contact a legislator.
Q. Is it presently on the site? On the small version, the portion of the site I looked at last night, I did not see any positions being taken on specific pieces of legislation, looking in California.
A. That's correct.
Q. Are there specific company positions expressed anywhere on the site with respect to pending legislation in any jurisdiction at present?
A. I don't believe we have posted any local issues on the site.
Q. Have you on national issues?
A. Well, we have on the DOJ lawsuit, and I'm trying to think if we have on -- I haven't looked at the site in a couple of weeks, so I'm not sure what's still up there or not, but --
Q. Is it contemplated that when Philip Morris --
A. Gray market, for example. We do have a position on gray market cigarettes, our opposition to them. We do have a position on excise taxes in general.
Q. Are those positions expressed on the website?
A. Yes.
Q. And are they expressed in terms of supporting or opposing specific pieces of legislation?

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A. No, not at the moment, they're not.
Q. Is it contemplated that Philip Morris may do that in the future?
A. It's a possibility.
Q. Has it ever done so yet?
A. I don't know that we've actually printed our position on the website, but there was a proposed excise tax in New York, a 55 cent tax, and we did let our website users know that they could, if they wanted to, contact their congressman by using our website to oppose that tax or support it if they wanted to, I mean that they could send a message to their representative about their position, or the governor, on the tax.
Q. Now, the next page in the physical sequence is 7979, and I think I see a clue --
A. You know, I'm going to reverse myself here and say that I am not positive that 74 and 75 -- 79 actually do come after 89 in site maps. But I have to tell you, without an actual date on all of these it's hard, because we -- while the overall content of the website really didn't change very much, we kept noodling around with where -- how we should navigate. So there were --
Q. I think I have one clue. I notice on 7979, which is the one we haven't talked about, Ingredients is moved over to being put underneath products.
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A. Right.
Q. And both 7974 and 7989, Cigarette Ingredients appears at the place where it was supposedly moved to.
A. Right. Right.
Q. Which would suggest that 7989 might be later than we had originally thought?
A. I believe it is, because that is where it wound up.
Q. Boy, that is fascinating. Anyone reading this deposition is going to say "Why did they talk about that for that length of time?"
Could you turn to page 7818.
A. Yes.
Q. And that is the page that has Specific Guidelines for PMI Sites?
A. Right.
Q. These guidelines -- who developed these guidelines?
A. I believe that would have been developed by either David Dangoor or Wendy Burrell or Owen Smith, someone in Philip Morris International, because this specifically talks about their specific Philip Morris International site and what guidelines they were going to use in putting together their site.
Q. So PMI in this case is Philip Morris
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International, not Philip Morris, Inc.?
A. That's correct.
Q. And is that true consistently as you use the initials?
A. PMI means Philip Morris International.
Q. And PMUSA would be the company that has the formal name Philip Morris, Inc.?
A. That's correct.
Q. And the translations back to English at the bottom should have been a little clue to me on that, shouldn't it?

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A. Yes.
Q. Other than the issue about the translations, were the other guidelines followed on the other portions of the site?
A. Yeah, well, for instance, no brand -- we did not have brand visuals on the PMUSA site, no product marketing, limited brand mention. Again, only as I said before, ingredients disclosure. So yeah, it was pretty much the same.
Q. And was part of that -- of the considerations that underlay that decision the fact that it would be accessible to kids?
A. That's -- that's part of it. And it just has never been designed as a marketing site. It is designed to be an informational site, and therefore we made it that. It

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is not meant to market to anybody. Not to kids, not to adults. It's meant to really talk about our company, our values, our products, our issues.
Q. So, for example, I don't know if there still is a Marlboro involvement in Formula 1 racing, but if there was, it wouldn't be referenced on the website?
A. In the United States it's CART racing. Formula 1 is in Europe. But that's right, it would not be on the website.
Q. For any of the companies? Not for corporate, not for International, not for U.S.A.?
A. No tobacco marketing on this site whatsoever.
Q. Not even sponsorship issues?
A. Nothing. Nothing that is brand -- specifically brand related, with the exception of the listing of the ingredients in our brands.
Q. Do you say in the sites that you contribute money to and make charitable contributions?
A. Some of the charities are listed. Not all of the charities are listed for privacy reasons and et cetera, but on part of our site, on the corporate site we do highlight some of our civic and charitable involvement and do little short stories about the charity, et cetera. And those are with the permission of the charity that they actually want to be listed and they want to be highlighted in our site.

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Q. Are there currently any arts events that have a Philip Morris brand name in the name of the event?
A. No. But under the master settlement agreement, that would not be allowed.
Q. And did that practice end at the time of the master settlement agreement?
A. Well, quite frankly, we really never used to do cultural programs on behalf of the brands. I mean we sponsor tennis, we sponsored auto racing, we sponsor, you know, a lot of other things, but cultural programs always tended to be corporate in nature.
Q. So you might have a Philip Morris ballet, but not a Marlboro ballet?
A. We don't even call it this. It would be the American Ballet, Alvin Ailey Ballet made possible through a grant from Philip Morris or sponsored by Philip Morris, but it wouldn't be the name of our company.
Q. On the next three-page group of documents, 8082 through 8084, can you tell me kind of where this fit in the process?
A. This would be part of the corporate site, and

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related to our corporate television campaign that launched at the same time as the website which featured some of our charitable and civic activity in the commercials, and these were the vignettes that I was kind of referring to before

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where here the D.C. Central Kitchen was highlighted. The next one was a brand bleep for Altoids, and the next one was Gateway Community Services and how Philip Morris helped them, et cetera. So this was not on the PMUSA site, this was on the corporate site.

Q. On the second page, the one about Altoids, did anything like that reach the final website?

A. Yes.

MR. LADD: Okay. I have a question. Isn't it also a requirement in every jurisdiction that you have a defense jar of Altoids at every trial and a plaintiff's jar of Altoids?

(Brief recess in proceedings.)

MR. LADD: Q. I guess what I'm trying to understand is the relationship between the policy to make this site not a product marketing site but having some reference to specific products.

A. Well, again, you know, this packet of materials that you have here tends to refer with exception of the PMUSA site site map to the corporate site. And on the corporate site there is mention of Kraft Foods and Miller beer, and although we don't use it as a marketing tool for our products, they are mentioned, as opposed to the tobacco site where we don't -- we don't do any tobacco marketing whatsoever.

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Q. So you can, as it were, click from the tobacco site to the Philip Morris corporate site --

A. Or vice versa.

Q. And from there go to a particular brand product distributed by Philip Morris?

A. That's right.

Q. Can you do that to a cigarette brand?

A. No, you cannot.

Q. Can you, by any combination of clicking around can you get to a cigarette product without leaving the site -- without leaving some Philip Morris site?

A. You cannot get to any cigarette marketing on our site whatsoever.

Q. Is there any cigarette marketing on the web at all sponsored by Philip Morris?

A. By Philip Morris? No, absolutely not.

Q. So -- and if your customers, distributors or retailers wanted to create a Philip Morris site on the Internet, is there anything to prevent them from doing that?

A. Yeah. The trademark protection would prevent them from --

Q. I see.

A. -- creating a Philip Morris site.

Q. They would need your permission to do it?

A. Well, or be sued.

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Q. Right. And is it also true that you would not give them permission to do that?

A. Absolutely not.

Q. And why not?

A. Well, number one, we would not give anyone permission to market our products except us.

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Number two, as far as sale, we are opposed to the sale of cigarettes on the website because we support face-to-face transaction where ID can be verified. So we are not using this as a marketing site.

Q. Has Philip Morris made any efforts to prevent use of its copyrights on private sites?

A. On private --

Q. Private sites. Personal sites?

A. We -- we actually have a trademark -- as part of Action Against Access, we actually created -- we have always taken steps against people who use our trademarks to market products that are not our products. And especially as it pertains to products that might be appealing to kids, like those little cars or T-shirts or caps or things like that.

We are very diligent about asking people to cease or desist if they try to use our trademark in any way, and would be on the web, as well.

Q. Have you made any effort to find personal websites that use your products on them?

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A. By --

Q. A 13-year-old girl wants to make herself look cool so she puts a Marlboro graphic on her personal website, "I'm Debbie, my favorite brands are Marlboro" --

A. No.

Q. -- Prell, et cetera.

A. No.

Q. No effort to find them --

A. No. I mean I don't know how we would find them, but if anyone were using our -- our logos in an illegal way trying to market something, I mean I don't know that we -- I don't know the law well enough to say that we could stop free expression if somebody wanted to say "I smoke Marlboro" on the website, I don't know that we could stop them from doing that.

But if they were using our logos in some way, we would certainly take action against them.

Q. Even if it wasn't being used for marketing? The logo was being -- not just the name Marlboro, but the actual physical logo which you have copyrighted? Have you ever taken action against personal website users who put that on there?

A. To my knowledge, we haven't taken action against personal website users, although we have taken action against people who have used our logos on any number of

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things in the past.

Q. You know, Allison's Home Page doesn't ring a bell, I assume?

A. Not at all.

MR. LADD: Just off the record.

(Discussion off the record.)

MR. LADD: Q. The next couple of pages is 8080 and 8081.

A. Yes.

Q. Is that related at all to the internal newspaper that we saw earlier today?

A. Well, yes and no. When we launched the website we previewed it with our employees, which I think I mentioned to you, about a week before it actually went up live. And as part of that preview we included this questionnaire just to see whether or not the employees liked the website or not.

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Q. Do you know if there was ever any tabulation of their responses?
A. There probably was. As I recall, overwhelmingly the people who accessed it within the company were very pleased. They thought it was very professional. They were very happy that we were in fact going to have a website, et cetera. So I don't remember the exact percentages, but overall, in general, employee reaction to the website was
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exceedingly positive.
Q. The next page, 7986, What's in a Cigarette. This I think was one of the pages I tried to click to that I couldn't find. Is there a page now that gives this kind of graphic treatment of the ingredients in a cigarette?
A. I believe there is. This -- this again I believe is a place holder. This was not a final, because you can see, it says Ingredient 1, Ingredient 2, Ingredient --
Q. Right.
A. Yes. So this was something that was done by the -- in this case, I think -- I think this -- I don't know if this was the PMUSA or the corporate website, but it would have been a place holder and a layout for consideration of how the information could be presented.
Q. Is the information still presented in a brand-specific fashion?
A. Yes.
Q. So you can find your cigarette, as it were?
A. You can go and find your cigarette, your packing, because, for instance, a Marlboro Lights might be different from a Marlboro full flavor, a Marlboro medium or Marlboro menthol. So you can go not just by brand name but actual packing of the cigarette and you'll get the ingredients.
Q. And is there a cutoff about when an ingredient becomes significant enough to be included as of the top
00197
five, or everything more than one percent or --
A. Everything actually is included, although flavorings, processing agents, et cetera, are kind of just listed as a grouping. But other than that, ingredients are.
Q. So there could be some ingredients that are listed where they're kind of subcategories that are not accessible on the site itself?
A. Are not broken out specifically but in a category grouping.
Q. And do you break down on any site the tobacco between various grades of tobacco?
A. No.
Q. Or between natural leaf and recon and things like that?
A. No. And obviously, we don't do anything to give formulas and formulation away. But just general content. So that actually tobacco processing mix would be going beyond that intent.
Q. And I take it that this idea seems to be expressed on 7987 and 7988, have business cards of pictures with various people?
A. Never made it.
Q. It was a non-starter?
A. It was a non-starter. And this was very early in the process, kinds of recommendations from -- in this case
00198
it would have been Giant Step. That was Philip Morris U.S.A., just kind of doing various designs and ways that we

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could think about organizing the website.
Q. Okay. The next document, 8403 through 8406, do you recognize the provenance or origin of that? It says Draft at the top.
A. This -- this was written by David Dangoor, and it was kind of his take on the issues and the approach that we might want to consider, objectives, et cetera, in dealing with the website. So he was one -- he was one of the task force members, as I mentioned, and this DERD at the end of the memo are his initials.
Q. And this was relatively early in the process, I assume?
A. I would say it was probably in May or early June that he might have written this.
Q. The next couple of pages are three pages, 8365 through 8367, Internet Survey.
A. Um-hmm.
Q. There are a question of some 14 numbered questions. Were those questions questions that were posed to members of the task force or --
A. No. This was a document that was put together by Giant Step.
Q. I'm sorry. By whom?

00199

A. Giant Step who was the Internet supplier for the Philip Morris U.S.A. website. And these -- when we awarded the business to them, they kind of put all of these questions together as issues that they felt they needed input from us to really get into the design process and the navigation process and to start thinking about how they were going to organize the site, et cetera. I mean we had already given them some briefing, but these were just more questions and issues that they felt we really had to focus on before we could really get into a final design for the website.
Q. And this particular document with the kind of the bulleted answers to the questions, is this something that Philip Morris sent back to them, or something --
A. No, this was their understanding. We had briefed them. This was their understanding of the briefing of what we wanted to do, how we would do it, some of the issues, and while there were answers, they really wanted us to affirm that they had come up with the right answers.
Q. In other words, that they had heard you correctly?
A. That's right. So this was -- this was a response to the briefing for them to then start their work in designing the website.
Q. Okay. And then the last set of documents seem to hang together, 7975 through 7978. Do you know where this

00200

came from and where it fit in the chronology?
A. This, again, is the Philip Morris U.S.A. website, and I'm not sure if this was a document that Giant Step sent to us or that Sean drafted and sent to Giant Step. But again, it was kind of the site map subject areas based on everything we'd agreed to starting to get a little bit more specific and really listing the kinds of information that would go under each topic area, if you will.
Q. On the top of the 7976 there's under the heading Tobacco Issues there's kind of an A and a B both which use the phrase "hard issues."
A. Right.
Q. A being hard issues to come from corporate legal

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and then B being U.S.A. hard issues. What did hard issue refer to?
A. It pretty much referred to the smoking and health and addiction and quitting and those types of causation issues. And then the B was -- and that -- those were the issues that were shared in common with corporate, as I said before.
And then the B, the U.S.A. specific, would be the ingredients which would just be the PMUSA manufactured and distributed products.
Q. And the phraseology, hard issues, was meant to convey what? That they were just difficult issues to deal

00201

with accurately or --
A. No. I think it was -- it was terminology that was used to mean hard issues as opposed to, I don't know, just that the issues that face us as a corporation, as an industry on our products. I mean I think it was just a phraseology. I don't think it was meant to really convey anything special except that they were -- the substance of smoking and health issues.
Q. In addition to the website, there were some corporate-level ads?
A. Correct.
Q. And were some of those ads youth prevention related?
A. One of the ads was about our support of the We Card program which I guess loosely you could say is youth prevention. But it was really -- it was not an ad that was targeted to kids; it was an informational ad to let people know that we supported access prevention and were a major supporter of the We Card program.
Q. There didn't seem to be copies or tear sheets of those ads in your material, and I wondered if that was because your secretary didn't think to gather it or --
A. No. It would be because that really was not part of my responsibility. The ads were separate from the website, although we included information on the corporate

00202

website about the advertising, it really was not part -- that is not a PMUSA project; that is a corporate project and it was developed by a team other than the task force that worked on the --
Q. Okay. How many different ads were there?
A. Four.
Q. And for how long a period of time did they run?
A. They are running now, and they started running in October.
Q. Is there a plan as to how much longer to continue to run them?
A. Indefinitely.
Q. And other than the one that you told me about, the We Card type program, what were the other topics?
A. There were four. There was one about Philip Morris' involvement in hunger that featured a woman who we supported a home delivery of food, in Minneapolis, as a matter of fact, got fresh tangerines in the winter, and part of our program for hunger relief and feeding the elderly.
There was one about our involvement in disaster relief which recounted a flood in a southern town and the fact that Miller stopped bottling beer and bottled water to bring in relief efforts.
And then the fourth one was about our support of

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domestic violence shelters and a story about a woman who had
00203
been abused and how she sought help in a shelter that we helped to support.
Q. And have those four executions remained consistent throughout this period of time?
A. They have. We're now developing some new subject matter, but right now those are the four that are running.
Q. Is the subject matter that's contemplated consistent with the general theme of "We're a good corporate citizen"? Is that it?
A. It's under the banner of "The people of Philip Morris working to make a difference."
Q. Is it Chevron that does that? There's one of the oil companies that has that?
A. Quite frankly, a lot of companies are doing that today.
Q. And where typically do the ads run?
A. They run on network -- mainly on network television. They run kind of broadly on mainly adult programming. Soap operas. You know, they run on Friends and ER and, you know, the top sit-coms and drama shows. And they launched on -- in October, and so they ran during the World Series. So really, a broad base.
Q. Do those ads bear the warning on them?
A. No. They are strictly -- they're non-product based ads and they have nothing to do with tobacco. They're
00204
about us as a corporation and what we do as a corporation.
Q. And in general, is it fair to say that when you run ads without the warnings, it's because you don't see them as merchandising or promotion of cigarettes?
A. Well, they're not.
Q. Right. Not in your view and hopefully not in anyone else's either?
A. Apparently not in the network's view or anyone else. They had to go through pretty stringent clearances and the networks saw them as corporate responsibility ads that do not mention tobacco or tobacco products in any way, shape or form.
Q. Has an effort been made to keep them out of time slots that children might see?
A. They are not on -- I mean, for instance, our youth smoking prevention ads run on MTV. Our corporate citizenry ads do not. So they are not scheduled on programming that has appeal to young people; they're really on adult either prime time or, as I say, soap operas, sporting events, whereas our youth smoking prevention ads run on shows that are focused on the age group, young people.
Q. I'm going to get back to Exhibit 7. Could you get that Exhibit 7 in front of you again? And I'm going to ask you a question about near the top of page 3.
A. Page 3?
00205
Q. The statement I'm going to refer to we were talking about before, it includes the phrase -- second paragraph: "We believe that the decision to smoke should only be made by informed adults - not children."
And I take it that the word "informed" in there is intentional?
A. Yes, it is.
Q. And it's intentional in the sense that free choice can be best exercised not only by people who are adults, but

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by people who have access to all the relevant information?
A. Yes. And in fact, again, if you look at the preamble to our website, we say that adult choice is something that we believe in. And that's what this website is all about, to provide enough information for adults to make the choice that's right for them.
So that was really one of the guiding concepts of the website, to provide a broad range of information.
Q. And was it also one of the guideposts of the website to allow people who wanted more detailed information to get to the more detailed information?
A. Yes. That's why we provided all of those links.
Q. Including some --
A. And so easily provided those links.
Q. And including some fairly technical materials?
A. Tech -- I mean I think people can start with, you

00206

know, kind of the summary statements, they can go to links, they can go deeply into links, they can go to technical information. I think they can choose for themselves just how much they want.
Q. And the site was intended to be designed that way?
A. The site was intended to be as comprehensive as we could make it by providing as much information as we could and then as providing as many links to as many other reputable sources as we possibly could.
Q. In the next sentence there's a reference to three things: Marketing practices, advertising codes and internal guidelines.
Is there a distinction between marketing practices and internal guidelines?
A. Yeah, there is a distinction, because in some cases I think internal guidelines really in some respects goes to the spirit question as opposed to the written laws or written guidelines or accepted practices where we may have had more stringent guidelines than maybe we needed to have or are prescribed by law.
Q. Are there marketing practices that affect cigarette advertising that the advertisers -- I'm sorry. That's the wrong word -- that the media has decided that from their point of view they won't run a certain kind of ad or they'll require justification for a certain kind of

00207

claim?
A. Well, I mean there are government agencies that --
Q. I'm going to put aside the government agencies for a minute and just talk about advertising.
A. As far as advertising, I mean there are advertisers who refuse to take any kind of tobacco advertising. They just don't accept it, so it doesn't make any difference what the content is, they just will not run an ad for tobacco products.
Beyond that, I have never known any of our advertising to have been rejected for any reason -- print advertising I'm talking about now, which is what we run. This is not to say that there aren't publications that have rejected ads, but I'm not aware of that.
Q. Now, advertising codes there is used in the plural, and I was wondering what that reference was?
A. Advertising --
Q. Codes.
MR. COFER: In the plural?
MR. LADD: Q. Yes. I mean I know what I think of

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as the advertising code for cigarettes. And I'm wondering if I'm missing something, if there are others?
A. I don't know that you are missing something. I think probably what that refers to is the evolution of maybe new rules being added over the years. So it was not meant

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to be something that you're not thinking of.
Q. Okay. My focus on the plural isn't very interesting, apparently. The advertising code that is kind of the core of that is the one that the industry adopted in the early '70s, if I remember correctly?
A. Yes. And then there were, as I recall, there was a -- or was it the marketing code that changed? One of the codes changed and there were new kind of limitations on some of the things.
Q. When the advertising code was first adopted, it was voluntarily adopted by the major cigarette manufacturers? Is that correct?
A. Yes.
Q. And there was a kind of a code authority, somebody to whom would to a certain extent police the industry in complying with the code.
A. Right.
Q. Does that function still exist?
A. Yes.
Q. And is there a particular human being who does that?
A. Well, it's the FTC that does it. But you mean --
Q. I meant the original voluntary one that the industry did. Has that been subsumed under the FTC's program?

00209

A. Yes, um-hmm.
Q. Under the advertising code, one company has the option of complaining about the ads of another company? Is that true?
A. I -- I think -- I assume so. I don't --
MR. COFER: Do you know?
THE WITNESS: I don't know, really. I don't know if that's -- I don't know that that is specifically in the code.
MR. LADD: Q. Okay. Were you aware that Reynolds had at one point criticized the Marlboro man as attractive to children?
A. Reynolds? No.
Q. A Reynolds attorney?
A. I am not aware of that.
Q. If that's true, that's news to you?
A. It is news to me.
Q. Do you know whether Philip Morris ever complained to any -- to the FTC or any other body about the Joe Camel ads?
A. I am not aware of that.
Q. Have you ever heard of any discussion within Philip Morris about doing that?
A. No, I have not.
Q. Do you know of any instances in which Philip

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Morris has complained about the ads of other people under the advertising code?
A. I am not aware of complaints about ads per se. I am aware of complaints about product claims, but not ads per se.

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Q. Were you aware of the fact that there was a -- do you recall an instance where -- that the tar and nicotine claims of a particular cigarette became the subject of an FTC inquiry?
A. Yes.
Q. And was Philip Morris either on the complaining end or the receiving end of that instance, the one that you recall?
A. The one that I recall, we were on the complaining end.
Q. And that was with respect to the brand of another company?
A. That's right.
Q. And the brand was?
A. Barclay.
Q. Barclay? And the company was whoever made Barclay, right?
A. I mean that was so many years ago. Was it Brown & Williamson? I think it was Brown & Williamson.
Q. You were aware that was a complaint that was

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initiated by the competitors to the Barclay brand?
A. I am aware of that.
Q. Have you ever heard of any debate within or discussion within Philip Morris about filing a similar complaint with respect to youth advertising issues against any other company?
A. Youth advertising issues? I'm not aware of what you're referring to.
Q. Okay. Do you recognize that -- I mean do you understand the code to have some provisions that are designed to reduce the appeal of ads to children?
A. I am, yes.
Q. In your view, has there ever been an instance where some other company has violated those guidelines?
A. I -- I don't believe they have, but then I don't work for any other companies. I don't know what their practices are and their motivation. For me, it's a matter of do they follow the marketing code? How do they choose the media that they run their ads in? How do they conduct their programs? And I am not specifically aware of violations.
Q. Have you ever heard of an instance where one member of the industry complained against another member of the industry based on violations of the provisions of the code designed to reduce the appeal to children?

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A. Designed to reduce the appeal to children? I don't -- I don't believe so. Offhand I'm not aware of it.
Q. Did Joe Camel strike you as violating either the letter or the spirit of the advertising code?
A. Not really. I mean Joe Camel didn't particularly appeal to me, but I believe that it was advertiser promoted in compliance with the code.
MR. COFER: When you get a chance, let's take about five more so we can get ready for home stretch.
MR. LADD: Now is as good a time as any.
(Brief recess in proceedings - 5:20 to 5:27 pm.)
MR. LADD: Q. Back on this Exhibit 7, pages 1 to 15 are essentially Philip Morris' explanation of its youth access program?
A. Yes.
Q. In them the effort was made to describe that

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program accurately and reasonably completely?
A. That's correct.
Q. I gather from page 3 that there is a department within Philip Morris called I guess the first question is called what that helps reduce -- is dedicated solely to help reduce the instance of youth smoking?
A. It's called the Philip Morris U.S.A. Youth Smoking Prevention Department.
Q. Sometimes YSP for short?

00213

A. YSP for short, that's right.
Q. Are there any incentive structure built into the managers of that agency to reward them for actual reductions in smoking by children?
A. They're not an agent, I mean they are -- they are employed by Philip Morris.
Q. Right.
A. And like all of us, there are goals that we are asked to reach, whatever department we work in, we have business goals, we have business plans. And obviously, having some impact on the issue of reducing youth smoking is one of the goals of the department. Short term it was to develop programs in conjunction with outside agencies, other groups, et cetera, that could or would or have been researched to show that they could have an impact on youth smoking, and reaching those goals is how that group is measured.
Q. And I take it there are people at Philip Morris whose compensation is increased to the extent that there are more sales of, say, Marlboro?
A. No. That's not really how it works.
Q. No?
A. No.
Q. Are there people whose salaries increase because the company performs well financially?

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A. Well, not exactly. I mean there is a yearly review period where you are rated as to your performance, and your performance is based on some goals that you may have set for what you were going to accomplish in your functional area. And based on that, you would get a salary increase of a percentage based on what your rating is.
Q. Are there any people for whom an increase in market share or an increase in the number of units sold translates into additional compensation?
A. Specifically on units sold, I haven't seen that set as a goal. I mean there are broad programs and broader goals. It's not that specific that sales have to go up by X percent in order for someone to get a raise.
Q. How about market share?
A. Again, I have not seen goals set exactly, individual goals set on unless the brand -- I mean we have corporate goals, but individuals are not judged that way.
Q. Is part of the compensation structure for senior management dependent upon the corporation -- in part, the corporation meeting its goals?
A. Yes.
Q. And will its goals include goals for sales?
A. Overall. It's more market share than -- market share and income.
Q. And so you and other members of management know

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that to the extent that your collective efforts help Philip

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Morris increase its share of the business in its markets that your compensation will tend to increase?
A. Well, I think it's more complex than that. There are -- there is more than one goal, what we have, and obviously market share is one, income is one, controlling costs is one, developing new programs.
You know, as I say, each functional group has different achievements. The IS group has an achievement of making sure that we have the proper technology in place to enable us to do our jobs. So their compensation is not based on selling.
Q. No, I didn't mean to suggest everyone's compensation was based on that, but there's certainly some people at Philip Morris who will tend to get more compensation to the extent the company is successful in selling its products.
A. Again, I -- I believe that people get rewarded and compensated for reaching their goals in their functional group. I don't believe one group gets rewarded more. We each get rewarded equally based on reaching our functional goals.
Q. And increased sales has nothing to do with that?
A. I didn't say that.
Q. Okay.

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A. I said that increasing market share as a total management -- as a total operating division for everyone, that would figure in. But individually we don't all have the same goals, but that doesn't mean that because my job doesn't increase sales that I get rewarded any less than someone else who is rated as doing as good a job as I am or vice versa.
Q. And what's the highest level person with responsibility for youth smoking prevention program? Is that you?
A. No. That's Carolyn J. Levy, who is senior vice president of youth smoking prevention.
Q. And is she on some kind of a bonus or stock option compensation system?
A. As it -- as well as anyone else on the senior team. She's a member of Mike Scymanczyk's senior team and would be eligible for the same kinds of bonuses and/or options as any one of the rest of us are eligible for.
Q. If the youth smoking prevention program not only succeed in reducing the incidence of teen smoking but also resulted in less smoking by adults, would that tend to adversely affect or positively affect her compensation?
A. I don't think it would affect her compensation if it adversely affected the smoking behavior of adults. If that is -- if that is one of the outcomes of our youth

00217

smoking prevention efforts, our position is so be it. We don't want kids to smoke. We market to adults who choose to smoke. And as long as everybody in the company, including those responsible for marketing, adhere to those guidelines and the way we do our business, if the business goes down then the business goes down and we're willing to accept that, because if there's no longer an adult market for our products then there won't be an adult market for our products.
Q. Why don't you flip to page 33. I have a very general question about pages 33 through 60.
A. Yes.

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Q. You recognize that as appearing to be a list which is available on the Philip Morris website?
A. Available on the Philip Morris website and been available for many years even before the website.
Q. Okay. Available on the web before that?
A. No. Available -- we reprinted, had this information reprinted, and anyone who requested it, we would send it to them.
Q. Okay. And that was a listing that -- is that a listing that was required by law? Or by regulatory --
A. No, that was a voluntary -- I mean these ingredients must be submitted to HHS every year and approved and all of that, so that our ingredients are known to the
00218
government agencies that we deal with.
But as far as making them public, that was a voluntary action.
Q. The ingredients must be approved by HHS?
A. Submitted. Yeah, we --
Q. Submitted, but not approved?
A. Well, I mean they are approved for use in cigarettes. They've all -- they all have some sort of approval as an ingredient.
Q. Specifically in cigarettes?
A. Or otherwise, yeah.
Q. Okay. I mean isn't the or otherwise --
A. They don't -- they don't approve the formulas.
Q. No, I understand that.
A. But the ingredients are --
Q. Aren't these ingredients, to the extent they are approved by anyone, generally recognized as safe ingredients, or so-called GRAS ingredients?
A. Right.
MR. COFER: Is that GRAS in foods or cigarettes?
THE WITNESS: Cigarettes. I'm under the impression it's on cigarettes. Am I wrong? Maybe I'm wrong.
MR. LADD: Q. I guess the question is do you believe that some government body has said that it's okay to
00219
burn this stuff and inhale the smoke?
A. No. No, that's not what I'm saying. That's not what I'm saying.
Q. Okay. These are ingredients that at least -- that could be consumed with some level of government non-objection, anyway?
MR. COFER: Actually, John, I'm not sure this is her area.
THE WITNESS: It's not my area.
MR. COFER: So I think based on her responses --
MR. LADD: Let's just go off the record.
(Discussion off the record.)
MR. LADD: Q. I take it that this list is not specific to Philip Morris?
A. These are the ingredients used in domestic -- not just our brands.
Q. Right.
A. Domestic --
Q. So someone has taken and --
A. Compiled the list.
Q. -- compiled the list from information submitted confidentially by Philip Morris and the others?
A. (Witness nods head.)

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Q. You would know --
MR. COFER: You shook your head.
00220
THE WITNESS: I'm sorry.
MR. COFER: Is that a yes?
THE WITNESS: Yes. Sorry.
MR. LADD: Q. So all you know is if you see a product on this list and you knew it wasn't on yours, one of your other five competitors must use it, but you don't know which one?
A. That's correct.
Q. Do you publish anywhere on your websites which of these ingredients Philip Morris uses?
A. Well, what we have on our website is a brand-by-brand listing of what is in our brands, as we discussed before.
Q. Okay. And that would list products on this level of specificity?
A. In some cases. In some cases, that's right.
Q. And in some cases it would just go under a heading flavorants and additives?
A. Processing agents. Exactly.
Q. Now, the information in here --
MR. COFER: Hang on one second, please.
(Brief recess in proceedings.)
MR. COFER: Sorry, John. Go ahead.
MR. LADD: Q. Under many of these categories, I'll take the first one which I can't pronounce -- I'll take
00221
the second one because I can pronounce that. Acetic acid, there's a listing, "as found in banana, beer, beef, apple juice," et cetera. Do you know where that information comes from?
A. I really don't. This is not -- this is not my area of expertise, so I can't --
Q. All right. But this was posted by -- was put on Philip Morris' list because you thought it might be of interest to someone deciding whether or not to smoke or considering the health implications of smoking?
A. Well, I think -- no, not so much the health implications as it's just an informational list of those ingredients, flavorings, et cetera, that go into cigarettes that in the spirit of kind of full disclosure of all that we included as part of our website.
As I say, this -- this list is something that has existed before our website. It's been out there, Philip Morris has made it available to any consumer who has asked for it in the past, and so we put it up on our website.
Q. Is there available on your website anywhere the ingredients not in the cigarette but in the smoke of a cigarette?
A. I don't believe so.
Q. Is there anywhere on the website that points out to the consumer that these are the ingredients not in the
00222
smoke but in the cigarette?
A. There is a descriptive page as to what ingredients are, how they act, how a cigarette is made. So that information absolutely does exist on the website.
Q. Does it tell the customer that when you burn this stuff different things get produced?
A. I don't believe there is that information.
MR. COFER: Off the record.

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(Discussion off the record.)
MR. LADD: Q. Could you turn to page 16. The language that's between the two lines of plus signs, do you recognize that as language that comes from either the Philip Morris U.S.A. or Philip Morris Companies website?
A. This comes from the Philip Morris Companies website.
Q. And is this somewhere near the top of the hierarchy?
A. This would be the tobacco page -- I don't want to call it home page, but --
Q. Tobacco Issues page?
A. The Tobacco Company's page.
Q. So that if one goes to the top level of the website and says "I want to find out about tobacco," this is the page one sees first?
A. This is the page that would come up. And then

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this page would either link to any of these issues directly or if you just wanted to go to Tobacco in the U.S.A. it would link to the Philip Morris U.S.A. website and then you could get all of this information. Or you could go to the Philip Morris International website and you can get all of this information.
Q. And the entries above the line of pluses and below the lines of pluses are essentially links to other pages?
A. Well, the -- above is kind of an index of what you could -- that's right. What if you clicked on you would link to that specific issue.
Q. And below there are specific documents that a consumer or customer might be interested in?
A. That's correct.
Q. And for example, that second one, Read the Industry Motion to Dismiss the Department of Justice Lawsuit, was a recent addition onto the website?
A. That's correct.
Q. Do you know whether the item that's identified as Tobacco Companies Attack Government Suit; Urge Federal Court to Dismiss Case Entirely is essentially a press release?
A. Yes, that is a press release.
Q. And the following one is an actual legal motion for anyone who would be interested in it?
A. That's right.

00224

Q. Do you know what the subject matter was of the Philip Morris Responds to the Letter from the Center for Tobacco-Free Kids?
A. I absolutely do, because I responded to it.
Q. What was the topic there?
A. It was basically a letter from Tobacco-Free Kids that urged Philip Morris to -- they ran an ad which in our opinion made some false allegations and was urging us to change our practices because they were contending that we marketed to kids. And I wrote a letter in response saying, one, outlining our youth smoking prevention programs, goals, actions that we had taken and kind of stating the facts to rebut some of the things that were in their letter, and inviting them to work with us to try and deal more effectively with the issue of youth smoking prevention.
Q. Other than publishing the letter on your website, was there any effort to give that letter publicity in any other fashion?

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A. Yes. We -- well, we -- because of their ad, there had been several stories generated and we had been called by several reporters for comment. And we sent a copy of our response to the ad to those reporters and several members of the media.
Q. Did you send it to anyone who had not called to

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initiate a conversation with you on the topic?
A. We sent it to some of the key media that covers our industry and have written stories in the past, but mainly it was available on the website.
Q. On page 18, the second paragraph, there's a statement there if I understand it correctly, I'm interpreting the word "they," and I guess the word "we." "We don't believe they should prohibit adults from choosing to smoke."
I gather the "we" is Philip Morris?
MR. COFER: Why don't you read the whole statement into the record, if you would.
MR. LADD: Q. Sure. "Although it is appropriate for government and health authorities to encourage people to avoid risky behaviors, we don't believe that they should prohibit adults from choosing to smoke."
MR. COFER: Thank you.
MR. LADD: Q. I take it that is a Philip Morris corporate policy?
A. It is a belief.
Q. Corporate belief?
A. It is a corporate belief.
Q. And what is the reason or supporting reasons for that belief?
A. I think the follow-up sentence says that. "The

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decision as to whether or not to smoke should be left to individual adults." Again, I think consistent with the position that we've taken on the website, we do believe in adult choice and we believe that adults should have the full range of information to make the decision on whether or not they choose to smoke.
Q. I guess the question is why? I mean we certainly do things like that in other areas, we require motorcyclists to wear helmets, for example, that don't protect anybody but themselves from the folly of their habit. Why is it that in Philip Morris' view cigarettes should be a matter of choice rather than something regulated by the government?
A. Well, cigarettes are regulated by the government.
Q. Other than prohibited by the government. Sorry.
A. Well, if the government chooses to make cigarettes illegal, then they would have the right to prohibit them and we would not market them. But as a legal product that are -- that are regulated by the government and an industry that's regulated, if we market responsibly, we believe that an adult's choice to smoke should be respected and that this choice should be theirs.
Q. And but I take it if there was a proposal in the Congress to prohibit adults from smoking, Philip Morris would feel free to oppose that proposed legislation?
A. I would think we would feel free to oppose that

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legislation.
Q. Has Philip Morris opposed any legislation protecting -- let me say it differently.
Did Philip Morris take a position with respect to

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the motorcycle helmet laws as they got adopted in the 1970s, '60s and '70s?
A. Actually, it was the '60s, and I don't know because I didn't work with Philip Morris at the time.
Q. Do you know of any instance, any other instance where Philip Morris has opposed legislation that would prohibit a hazardous activity?
A. I -- offhand I'm not aware of it, but --
Q. Has Philip Morris taken any positions with respect to the legalization of any activities that are pleasurable but currently prohibited?
A. Not to my knowledge.
Q. Philip Morris, in short, hasn't taken the same position with respect to marijuana that it takes with respect to tobacco?
MR. COFER: Well, I object to the form of the question. Tobacco is a legal product. Marijuana is prohibited except for very limited uses in very limited contexts. So I object to the analogy.
MR. LADD: Q. Well, the question is whether Philip Morris would support the legalization of marijuana or

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the prohibition of marijuana, not that they wouldn't comply with the law.
You guys obviously follow the law. You don't sell marijuana, correct?
A. No. And if cigarettes were prohibited, we wouldn't sell cigarettes.
Q. And you would, in fact, oppose legislation that made cigarettes illegal?
A. Well, you know, that's -- that, again, is a hypothetical question. I guess it would really come down to the public will. I mean if there was a ground swell among the public to make cigarettes illegal, I don't know. We might not. So again, it would -- it would come down to the context of when, where, what public sentiment was, whether we felt that our point of view was aligned with society's.
I mean the overwhelming number of Americans, even those who support restrictions on tobacco, don't support prohibition. They don't think it's a good idea and don't think that cigarettes should be outlawed. So the public will is not calling for making cigarettes illegal.
If that sentiment were to change, I don't know where Philip Morris would come out. We might support it.
Q. But within the current public opinion, Philip Morris right now doesn't believe that government should prohibit adults from choosing to smoke tobacco?

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A. That is correct. And that's -- and that seems to be a point of view that is shared by the vast majority of Americans.
MR. COFER: You're getting tired.
THE WITNESS: I am?
MR. LADD: I am.
Q. On page 20, Cigarette Smoking and Disease in Smokers. Do you recognize the content that starts with a row of plus marks on page 20 then continues to the row of plus marks on page 21 as being a page or the text from a page on a Philip Morris website?
A. Yes.
Q. And does anywhere on your Philip Morris website contain a statement that cigarette smoking causes lung cancer or any other disease?

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MR. COFER: Objection. Asked and answered.
You may answer.
THE WITNESS: It's right here, clearly stated. "There is an overwhelming medical and scientific consensus that cigarette smoking causes lung cancer, heart disease, emphysema and other serious diseases in smokers."
MR. LADD: Q. Does Philip Morris believe that that consensus is correct?
MR. COFER: Again, asked and answered.
I think we spent quite a bit of time on this area earlier today.
MR. LADD: Well, I have only got four minutes left.
MR. COFER: You know, I'm not going to hold you strictly to four, either.
MR. LADD: It's fair.
MR. COFER: If you have more. Would you read the question back? And you may answer. Just my objection is noted.
(Question read as follows:
Q. Does Philip Morris believe that that consensus is correct?)
THE WITNESS: Philip Morris believes that there is an overwhelming consensus, which is why we've stated it on our website. And Philip Morris believes that smokers are far more likely to develop serious diseases than non-smokers. But Philip Morris does not believe that either the mechanisms or the constituents that cause disease have been identified, which is I think consistent with the answer I gave earlier.
MR. LADD: Q. Okay. I guess I notice that there's a difference between the first and the second sentence there. Philip Morris says that smokers are far more likely to develop serious diseases than non-smokers. That's a statement of Philip Morris; is that correct?

A. I --
MR. COFER: Where are you reading?
MR. LADD: The second sentence of that paragraph.
MR. COFER: Where is it attributed to Philip Morris?
MR. LADD: Q. It says smokers are far more likely to. There's no attribution; it's a consensus that smokers are far more likely.
A. We say in the last, "There is no 'safe' cigarette. These are and have been the messages of public health authorities worldwide. Smokers and potential smokers should rely on these messages in making all smoking-related decisions."
Q. Does Philip Morris believe that smokers are far more likely to develop serious diseases than non-smokers?
A. I think we're very clear on what we've said here. We as part of the Hatch statement and our agreement with Senator Hatch have agreed not to be part of the debate or the dialogue, and in fact, to communicate to adults and likely consumers the position of the medical and scientific community and to make all of that information available, and then it is up to the adult to disseminate that information and may come to their own conclusions and decisions.
Q. Was it a conscious decision of Philip Morris not to itself express a belief or disbelief in the consensus?

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A. We several years ago, at the behest of the government, made an agreement with the Hatch Committee that we would not enter the dialogue. There had been a feeling by some public health authorities and government officials that our being part of the dialogue was not constructive or helpful; that they wanted us to defer to the public health community for people to get their information from the public health community about the risks associated with making the decision to smoke.

What we are doing is presenting the information and then providing the links for adults to get as much information as they think they need to make the decision that's right for them before they decide to do something that we believe is risky and is dangerous, which is the decision to smoke.

Q. So there was a decision, then, and an agreement not to enter the debate as an entity?

A. There was an agreement with Senator Hatch not to be part of the dialogue on the health effects of smoking, but to ensure that we deferred --

Q. Okay.

A. -- to the public health community and made available that information.

Q. Would you view it as a violation of your agreement with Senator Hatch to have a website with just four words on

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it, "Our cigarettes cause disease"?

MR. COFER: Objection. Calls for a legal conclusion.

MR. LADD: Q. The agreement with Hatch wasn't -- didn't become a matter of law, did it?

A. No, but it is a commitment on behalf of our company, and I -- I can't make that decision what Senator Hatch would think about it, whether he thinks it would be a violation.

Q. No, I'm asking whether you think that would be a violation. Just a simple four-word web page.

A. I don't know the answer.

Q. "Our cigarettes cause disease."

A. I don't know whether that would be a violation of what we agreed to with Senator Hatch. That was very specific and very specifically-crafted language that we are expected to communicate on this issue.

Q. Have you ever attempted to check with Senator Hatch or his staff as to whether he believes that the agreement would prohibit you from entering the dialogue to say you think that the public authorities are right and that cigarettes do cause disease?

A. I have not spoken to Senator Hatch. I have no contact with him. I don't know Senator Hatch.

Q. Do you know of anyone at Philip Morris who has

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attempted to do that?

A. I don't know the answer to that.

MR. LADD: It's 6:00 o'clock, I think, pretty much. Thank you. I appreciate it.

MR. COFER: Off the record or on the record?

MR. LADD: Let's stay on the record for just a moment.

MR. COFER: Okay.

MR. LADD: I believe that, given the volume of documents and the breadth of the topics here, that this amount of time was not adequate to cover this topic fully.

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I am happy to work with you to try to avoid the necessity of either you moving for a protective order or me moving to compel further deposition, but I think we probably kind of agree to disagree on that issue at this stage. And I think we've agreed to try to eliminate as many problems as we can, stipulations on the documents.

MR. COFER: Right.

MR. LADD: Okay?

MR. COFER: Okay.

MR. LADD: And I can't obviously bind Madelyn even to that.

MR. COFER: Sure.

MR. LADD: Q. But I hope that she will work with us in this process, but that's really up to her.

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MR. COFER: Sure. Okay. John, thank you. Mark, thanks.

MR. LADD: Thank you very much.

THE WITNESS: Thank you.

(Whereupon the taking of the Witness' testimony was concluded at 6:02 p.m.)

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DATE SIGNATURE of the WITNESS

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